154 of 52 of 1861 385

March 8 submitted

SUPREME COURT OF THE UNITED STATES.

No. ~~196~~ 154.

CHARLES CLAGETT, PLAINTIFF IN ERROR,

v.

DAVID W. KILBOURNE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

Equitment on an equitable title

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SUPREME COURT OF THE UNITED STATES.

No. 238.

CHARLES CLAGETT, PLAINTIFF IN ERROR,

v.

DAVID W. KILBOURNE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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The United States of America, District of Iowa, Southern Division, *ss.*

Pleas before the District Court of the United States for the District of Iowa (Southern Division), at a term begun and held at the city of Burlington in said district, on the third Monday, to wit, the seventeenth day of May, in the year one thousand eight hundred and fifty-eight, before the Honorable J. M. Love, sole judge of said court, for the district of Iowa.

CHARLES CLAGETT
v.
DAVID W. KILBOURNE. } In Ejectment.

Be it remembered, that heretofore, to wit, on the 31st day of December, A.D. 1856, there was filed in the office of the clerk of said court a petition, in words and figures following:

Petition.

The United States of America, District of Iowa.

To the District Court of the United States in and for the District of Iowa, to the May Term, 1857, Southern Division, sitting at Burlington, Hon. James M. Love, judge.

CHARLES CLAGETT
v.
D. W. KILBOURNE. }

Your petitioner, Charles Clagett, who is a citizen of the State of Maryland, claims of the defendant, David W. Kilbourne, who is a citizen of the State of Iowa, the possession of one undivided sixth part of the following tracts of land, to wit: the east half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$) of section number twenty-six (26), the fractional northwest quarter ($\frac{1}{4}$) of section number twenty-five (25); the southeast quarter ($\frac{1}{4}$) of section number twenty-three (23), and the southwest quarter of section number fourteen (14), containing in all about five hundred and forty-two $\frac{6}{10}$ acres ($542\frac{6}{10}$ a.), and all situated in township sixty-five (65) north, and in range five (5) west, in the county of Lee, and State of Iowa, which said tracts of land are worth the sum of, at least, twenty-five thousand dollars, and which said lands your petitioner avers are wrongfully withheld by

said defendant from your petitioner, and for cause of such claim, your petitioner states,

That on the twenty-second day of October, in the year one thousand eight hundred and thirty-six, Joshua Aiken, Isaac Galland, Samuel Marsh, Benjamin F. Lee, William E. Lee, George P. Shipman, Henry Seymour, Edward C. Delavan, and Erastus Corning, entered into certain articles of association, duly signed and sealed, and delivered by said parties, a copy of which, as they appear of record, is herewith filed, marked Exhibit A., and made a part of this petition as fully as though same were actually herein recited, by which said articles it was covenanted and agreed, that of all lands purchased and to be purchased, the legal title thereto was to be invested, and was invested, in Joshua Aiken, Isaac Galland, Samuel Marsh, William E. Lee, and Edward C. Delavan, as joint tenants, in trust for the persons and purposes therein enumerated and particularly set forth. Your petitioner further states, that it was also covenanted and agreed, that of the interest and right of the said parties in and to said premises then purchased, or thereafter to be purchased, the said Isaac Galland was the owner of eight undivided forty-eighth parts, or one-sixth thereof. Your petitioner further states, that on the fourteenth day of April, in the year one thousand eight hundred and forty, Josiah Spalding, and others, filed their petition in the District Court, in and for the county of Lee, and then Territory, now State of Iowa, praying for a partition of the half-breed tract, or reservation, in said county of Lee, lying between the Mississippi and Des Moines rivers, bounded on the north by a line drawn from the northwest corner of the State of Missouri, east to the Mississippi river, and containing about one hundred and nineteen thousand acres of land, a copy of which said petition is herewith filed, marked Exhibit B., and made a part of this petition as fully as though same were actually herein recited, in which said reservation so sought to be partitioned, your petitioner says, was included the land now sought to be recovered.

Your petitioner further states, that on the eighth day of May, in the year one thousand eight hundred and forty-one, Samuel Marsh, William E. Lee, and Edward C. Delavan, a majority of said trustees in said articles mentioned, filed their answer to said petition, a copy of which answer is herewith filed, marked Exhibit C., and made a part of this petition, as fully as though the same were actually herein recited. That accompanying said answer was a schedule of titles claimed by said trustees, and that they filed with said answer, as a part thereof, the articles of association herewith filed as Exhibit A.

Your petitioner further states, that in filing said answer, they filed same as trustees under said articles, for the persons interested in said association, agreeably to the stipulations and conditions therein set forth, according to their respective interests. And he

further avers, that under and by virtue of said articles so filed as a part of said answer, the said Isaac Galland was the owner of eight undivided forty-eighth parts thereof.

Your petitioner further states, that upon the said petition and answer, and other answers and claims therein filed in said cause, the said court did, on the said eighth day of May, in the year one thousand eight hundred and forty-one, order and adjudge that the claims and rights of the said parties respectively, to the undivided portions of the land mentioned and described in the said petition of partition, amount in the whole to the number of one hundred and one equal portions, and that of these, the defendants Marsh, Lee, and Delavan, trustees for the claimants, under the articles of association, dated 22d of October, in the year 1836, filed in this case, and as trustees for the persons interested under said articles, are entitled to forty-one shares and five-eighths of a share, which said decree was confirmed by said court. Your petitioner further states, that by virtue of said decree, commissioners were appointed to partition said property; that they proceeded in the execution of their duties, and after making partition of said property, or so much thereof as was susceptible of partition, did report their proceedings to said court, which said report was duly ratified and confirmed by said court, on the sixth day of October, in the year one thousand eight hundred and forty-one. Your petitioner further states, that the lands claimed in this petition, were by said proceedings and partition, adjudicated and awarded to said trustees, in the manner and for the purposes and trusts as above stated under said articles of association, and that the legal title thereto was duly vested and confirmed in all of said trustees, as above stated in said articles of association, under which said proceedings in partition, said trustees claim title to said property, and which your petitioner affirms were regular, valid, and satisfactory to said trustees.

Your petitioner further states that in October, in the year one thousand eight hundred and forty-three, one Joseph S. Hull recovered in the said District Court, in and for the county of Lee, of the then Territory, now State of Iowa, a judgment against the said Isaac Galland, for the sum of nine hundred and ninety-four dollars, damages; together with his costs of suit, which was a regular, general, and valid judgment.

Your petitioner further states, that on the sixth day of March, in the year one thousand eight hundred and forty-five, a fieri facias execution was issued regularly, out of said District Court, to the sheriff of said county of Lee, against said defendant; which said execution was returned nulla bona, or no property found, by said sheriff. And he further avers that said execution was issued upon said judgment.

And your petitioner further states, that on the sixth day of March, in the year one thousand eight hundred and forty-seven, an

alias fieri facias execution was issued regularly, out of said District Court, to the sheriff of said county of Lee, against said defendant, upon said judgment, which said alias execution was returned nulla bona, or no property found, by said sheriff.

Your petitioner further states, that on the twenty-eighth day of June, in the year one thousand eight hundred and fifty-one, a pluries fieri facias execution was issued upon said judgment regularly, out of said District Court, to the sheriff of said county of Lee, against said defendant; which said pluries execution was regularly levied by said sheriff (among many other lots and tracts of land levied upon) upon the eight undivided forty-eighth parts of said lands, mentioned in and described in this petition; being all the interest, legal and equitable, of said defendant, Isaac Galland, in and to said lands mentioned in this petition at the time of said judgment, and at the time of said levy. That said lands so levied upon, and said interest therein, were duly advertised and sold on the twenty-fifth and twenty-sixth days of August, in the year one thousand eight hundred and fifty-one, by said sheriff. That upon such sale said interest in said lands were purchased by Thomas W. Clagett and George C. Dixon, by the name of Clagett & Dixon, as the highest and best bidders therefor; that upon such sale said sheriff executed certificates of purchase of said lands to said Clagett & Dixon, or their assigns; that said lands were not redeemed, nor have they ever been redeemed from said sale. That said certificates of purchase were duly assigned to your petitioner, who, on the thirty-first day of August, in the year one thousand eight hundred and fifty-two—the time for redemption having expired—received from Alexander R. Wheat, the successor in office as sheriff of the county of Lee, of the sheriff who sold said interest in said lands, a deed from said Wheat, as sheriff, conveying said interest in said lands so levied upon to your petitioner; which said deed conveying said interest in said lands, together with other lots and lands therein named, was regularly executed by said sheriff, duly acknowledged and recorded in deed book No. 13, page 107, in and for said county of Lee.

Your petitioner further states that by virtue of said judgment, levy, sale and deed, as above recited, he became invested with all the right, title, interest, and estate of said defendant, Isaac Galland, in and to said lands, described in this petition, legal and equitable, as the same was levied upon, and above described. And your petitioner avers, that by virtue of all of said proceedings, herein recited, he became, and was, and now is, the owner of eight undivided forty-eighth parts, or one undivided sixth of said lands, described and set forth in this petition, and that he holds the legal title to the same. And he alleges that he has by virtue of said proceedings a valid, subsisting interest in said lands, as above described, and has a right to the immediate possession thereof, as he has above stated. All of

which said allegations he is ready to prove by the records and proceedings of said court, and by sufficient and legal testimony.

Your petitioner further states, that said defendant, David W. Kilbourne, claims said lands by virtue of certain deeds executed by Samuel Marsh, William E. Lee, and Edward C. Delavan, as part of trustees aforesaid, under said articles, and by virtue of said decree in partition, and said articles of association so filed in said partition proceedings, to said defendant, Kilbourne; which said deed was acknowledged and recorded in the recorder's office, in and for said county of Lee. And that by virtue of said deeds said defendant, Kilbourne, claims to hold the legal title to all and every portion of said lands, described in this petition, notwithstanding that said deed is not executed or signed by all of said trustees, living and surviving, in said articles of association mentioned.

And your petitioner avers, that by virtue of said deeds said defendant, Kilbourne, took possession of said lands so described in this petition, upon the execution and recording of the same, and has ever since, and still retains possession of the same; and claims the entire legal title thereto, by virtue of said deed, and the right of possession.

Your petitioner further claims the sum of two thousand dollars, as damages, for said wrongful withholding of said possession of said lands, so described in this petition.

Your petitioner further states that said David W. Kilbourne, defendant, claims to own and hold all of said land, adverse to and exclusive of your petitioner's claim and right, and to have ousted your petitioner.

Your petitioner further states that said Isaac Galland, the defendant in said judgment, was one of the five trustees invested with the legal title in and to all lands purchased under said articles of association, as will appear by reference thereto.

Your petitioner further states, that at and during the time of said proceeding in partition, and when said partition was made, and the report of the commissioners making the same was duly ratified and confirmed, and said judgment in partition declared final and conclusive, said Isaac Galland continued to be such trustee, invested with said legal title, in connection with said co-trustees as aforesaid, as fully and completely as the same was conferred upon him by said articles of association.

Your petitioner further states, that since that time, that at the time of rendering said judgment against him in favor of said Hull, and at the time of said levy and sale and deed to your petitioner, said Isaac Galland has continued to be trustee as aforesaid, invested with said legal title in connection with said co-trustees, as fully and completely as the same was conferred upon him by said articles of association.

Your petitioner further states, that no judicial or equity proceed-

ings have ever been instituted or had, seeking to remove said Isaac Galland from said trusteeship, or in any manner, or in any form, or in any way, questioning or involving his right thereto, but that said trusteeship in said Galland remained firm, operative, and effectual up to the time of the execution of said sheriff's deed to your petitioners, as above set forth.

Your petitioner therefore avers that he is the legal owner of and holds the legal title to said eight undivded forty-eighths, or one undivided sixth part of said lands, described and set forth in this petition. And he prays judgment against the said defendant David W. Kilbourne, for said undivided portions or parts of said lands as above set forth, and also that he recover of said defendant David W. Kilbourne the sum of two thousand dollars damages, by him sustained, occasioned by the unlawful withholding said interest in said lands as aforesaid.

THOS. W. CLAGETT,
Attorney for Plaintiff.
GEORGE C. DIXON,
Counsellor for Plaintiff.

Exhibit A., referred to and made a part of Petitioner's Petition.

"Copy." Articles of Association.

This indenture, made the twenty-second day of October, one thousand eight hundred and thirty-six, by and between the several persons whose names and seals are hereunto subscribed, that is to say, Joshua Aiken, of Peoria, and Isaac Galland, of Commerce, in the State of Illinois; Samuel Marsh, Benjamin F. Lee, William E. Lee, George P. Shipman, Henry Seymour, all of the city of New York; Edward C. Delavan and Erastus Corning, of the city of Albany. Whereas the said Joshua Aiken, Robert E. Little, and Isaac Galland, as agents acting for and in behalf of the persons and parties hereinbefore named, have purchased certain lands situate, lying and being in the Wisconsin Territory, between the Mississippi and Des Moines rivers, part of a tract reserved in a certain treaty made on the fourth day of August, one thousand eight hundred and twenty-four, between the United States and the Sac and Fox nations or tribes of Indians, for the use of the half-breeds of said nations or tribes of Indians, amounting in the whole to the sum of about twenty thousand dollars, the title to which said premises already purchased, is at present in the name of Eli Goodwin, Benjamin F. Lee, William E. Lee, Joshua Aiken, and Isaac Galland, all parties hereto except the said Eli Goodwin. And the said Aiken and Little are authorized by the other persons and parties to these presents, to invest a further sum, in their discretion, in the purchase of other portions of the same premises, for and on account of the whole the sum of seventy-five thousand dollars, including the above twenty thousand dollars; the

title to all which premises is intended to be vested in the persons hereinafter named, as joint tenants, and not as tenants in common, for the benefit of the parties hereinafter mentioned. Now, therefore, in consideration of the premises, and in order to the more efficient, careful, and advantageous management of the said property, and for the greater facility in obtaining the titles and ascertaining the quantity to which, by such purchases, the parties hereto may be entitled, and also in view of dividing the said premises among and to the several persons and parties who may be entitled to portions thereof by virtue of these presents, in fee simple, as tenants in common, the said parties hereto individually, and not jointly, each for himself, his heirs, executors, administrators, and assigns, covenants and agrees to and with the others, and each of them, and to and with them and each of their heirs, executors, administrators, and assigns respectively, as follows, in respect to the said property so purchased or hereafter to be purchased, that is to say:

Firstly. That the title to the property already purchased shall be conveyed to and duly vested in Joshua Aiken, of Peoria, and Isaac Galland, of Commerce, in the State of Illinois, Samuel Marsh and William E. Lee, of the city of New York, and Edward C. Delavan, of the city of Albany, as joint tenants and not as tenants in common, in trust for the persons and parties interested therein, as hereinafter defined; and the title to all lands hereafter purchased or acquired by the said Aiken and Little, in the said district of country, shall be taken in the names of the said trustees as joint tenants, and not as tenants in common, for the benefit of the parties hereto. And it is hereby mutually agreed and understood by and between the parties hereto, that the interest and right of the said parties in and to the premises already purchased, or hereafter to be purchased, in pursuance hereof, is as follows, that is to say: the whole into forty-eight shares or parts to be divided; the said Joshua Aiken and George P. Shipman, jointly, nineteen undivided forty-eighth parts of the whole of said premises, the said George P. Shipman in his own right two undivided forty-eighth parts; the said Isaac Galland eight undivided forty-eighth parts; the said Edward C. Delavan four undivided forty-eighth parts; the said Samuel Marsh two undivided forty-eighth parts; the said Benjamin F. Lee, three undivided forty-eighth parts; the said William E. Lee, six undivided forty-eighth parts; the said Erastus Corning two undivided forty-eighth parts; the said Henry Seymour two undivided forty-eighth parts.

Secondly. And the parties hereto mutually covenant and agree to and with each other, and each for himself, to assume and pay on account of and for the purchase-money, expenses, and improvements of said premises, purchased and to be purchased, in the following shares and proportions, that is to say, the said Isaac Galland eight forty-eighth parts of the whole; the said Edward C. Delavan eight forty-eighth parts; the said Samuel Marsh four forty-eighth parts;

the said Henry Seymour four forty-eighth parts; the said B. F. Lee four forty-eighth parts; the said William E. Lee eight forty-eighth parts; the said Shipman and Aiken, jointly, four forty-eighth parts; the said George P. Shipman, in his own right, four forty-eighth parts; and the said Erastus Corning four forty-eighth parts; at such time as the same shall be required to meet the drafts and notes already made, or which hereafter may be made, by the said Aiken & Little or either of them, or by any other agent or agents duly authorized, on account of the premises already purchased or hereafter to be purchased under these presents. And for this purpose the parties hereto respectively agree to accept and pay any draft or drafts which the said trustees, their agent or agents, or their treasurer by them duly authorized and appointed, shall at any time make upon them or any of them for their shares or interest as aforesaid.

Thirdly. And the parties hereto mutually covenant and agree that the said trustees, or a majority of them, shall have power, and it shall be their duty, 1st, to cause the title to said lands and property to be thoroughly examined, and established in such form of proceeding as they may be advised to be proper to protect the parties in interest against any loss or question on account thereof. 2d. To cause the land purchased to be surveyed, so that the exact quantity of land acquired by the parties hereto by the purchases already made or hereafter to be made, as herein provided, shall be ascertained. 3d. Out of the said premises they shall cause to be surveyed and laid out such sites for towns, villages, and cities, as they may deem eligible and important for such purposes, of all which sites they shall have surveys and maps made, and shall furnish each of the parties to these presents with copies thereof. They shall also cause the said property to be thoroughly examined in reference to water-power and hydraulic privileges, and such points as may be designated for such purposes they shall cause to be laid out in reference thereto, and give an account thereof to the parties to these presents as hereinafter provided. 4th. And the said trustees are hereby authorized to sell and convey from time to time, as they may find opportunity, any part of the land so purchased, on such terms as to payment, and to take such securities for the purchase-money or any part thereof as they shall think fit. 5th. And the trustees, or a majority of them, are also authorized to make all contracts, and do all lawful things and acts that may be necessary or proper to carry into effect the objects of this agreement, and to promote the interest of the parties concerned in respect to the property purchased and every part thereof. 6th. To employ, substitute, and authorize such attorney or attorneys, agents and clerks as may be necessary in executing the objects of this agreement, and in the care and management of said property, and to allow them such compensation for their services as they may think fit; and in the event of the

death of any of the said trustees occurring before the trusts hereby created are perfected as herein provided, it is hereby mutually agreed that the surviving trustees shall designate some other person to supply the place of such decedent, and the person so designated shall take the place of such decedent, and execute faithfully all the duties hereby created in the same manner as such decedent, if living, might, could, and ought to have done.

Fourthly. It is hereby mutually agreed by and between the parties hereto, that the purchase-money and the costs of improvements, taxes, and assessments which have been paid, or which at any time hereafter shall be paid, by the said trustees, or any of them, or by any of the parties hereto, or by any other person interested in the avails of the said property, are to be charged upon the said property, and repaid out of the first proceeds thereof; and the proceeds of said property already purchased or hereafter to be purchased under this agreement, and the proceeds of improvements made and to be made thereon, or on any part thereof, with all the rents, income, and avails thereof, howsoever arising or accruing, after paying all the expenses, charges, and disbursements for such improvements, taxes, and assessments, care and management, shall be first applied to the repayment of the said purchase-money, by whomsoever paid or advanced, with interest thereon, and to the extinguish of any sum which shall remain due and unpaid to any person or persons on account thereof, which payments shall first be made to the persons who have paid most on the shares they are by this agreement bound to pay for, till the balance of such payments shall be reduced to the same on each share, and then pro rata upon all the shares, till the whole cost is repaid, so that the said premises and every part thereof may be free, clear, and unincumbered.

Fifthly. And it is mutually agreed that the said trustees shall and will, in good faith, to the best of their ability, so manage and dispose of the said property, and of every part thereof, as to promote the interest and advantage of all persons having a right to share in the avails and proceeds thereof; and that they shall and will, after paying all just and proper expenses for taxes, assessments, surveys, agencies, counsel fees, and improvements, as aforesaid, growing out of the proper care and management of the said property, and every part thereof, faithfully at all times, and particularly on the first Monday in July in each and every year hereafter, account for and pay to the parties hereto, and each of them, his or their assigns or personal representatives, the portion of the avails and proceeds of the said property which he or they may be entitled to by virtue hereof. And the said trustees shall keep a regular book of account or accounts, in which shall be entered all their purchases, sales, and proceedings in respect to said property, and every part thereof; which books shall at all times be open to the inspection of any of the said parties interested in the said premises; and they shall semi-

annually, on the first days of January and July in each and every year, render an account of their doings to each of the parties interested, if required.

Sixthly. And it is mutually covenanted and agreed also, that whenever the trustees shall have received or realized money enough for the sale and other disposition of the property, to pay up and satisfy the whole amount of the purchase-money and improvements and interest thereon, over and above the taxes, assessments, and expenses of management, the power of the said trustees to sell said property shall cease, determine, and be at an end; and they shall forthwith thereafter, and with as little delay as the nature of the business will admit, proceed to make partition of said premises, and to lay off and divide the same in manner following, that is to say: They shall first divide the whole of said premises into two classes, viz., in the first class shall be embraced such portion of said property as may have been laid off and reserved for the sites of towns, and villages, and cities, and of hydraulic privileges; and in the second class shall be embraced all the residue of said property; and they shall thereupon divide each of the said sites of towns, villages, cities, and hydraulic privileges, embraced in the first class, into forty-eight parts of equal value, quantity, and quality, relatively considered, and the residue of said premises, embraced in the second class, shall be divided into forty-eight parts of equal value, quantity, and quality, relatively considered; and the property thus divided and apportioned shall be distributed among the parties and persons interested, in the proportions hereinafter stated, which distribution shall be made by the said trustees for the time being by lot, so as to secure to each his just share in each class, as above specified; and sixty days' notice shall be given by the said trustees to each of the parties interested of the time and place of such distribution; and upon such division they shall forthwith, by good and sufficient deed or deeds, release and convey in fee to the several persons and parties interested, their heirs and assigns, forever, all the said residue of said property in the shares and proportions following, that is to say: To the said Joshua Aiken and George P. Shipman jointly, nineteen forty-eighth parts; to the said George P. Shipman, in his own right, two forty-eighth parts; to the said Isaac Galland, eight forty-eighth parts; to the said Edward C. Delavan, four forty-eighth parts; to the said Samuel Marsh, two forty-eighth parts; to the said Benjamin F. Lee, three forty-eighth parts; to the said William E. Lee, six forty-eighth parts; to the said Erastus Corning, two forty-eighth parts; to the said Henry Seymour, two forty-eighth parts. And the trustees shall also, at the same time, divide among the said parties, in the same proportion, all the money, securities for and evidences of debt which they may have on hand accruing from the said property, or any part thereof.

Seventhly. It is understood that the said Aiken and Little shall

not, directly or indirectly, during the continuance of these presents, make any purchase of lands in the said districts of country on any other account, except by the consent of the trustees for the time being, until after the said fund of seventy-five thousand dollars shall have been fully invested by them; and if, after that, they shall make any purchases of the said lands, the parties hereto shall have the refusal thereof at cost, on the terms and in the proportions herein expressed.

Eighthly. The said trustees shall give to each one of the parties interested a certificate under the hands and seals of at least two of them, one of whom shall be the president or chairman of the board of trustees, stating the interest which, by virtue of these presents, he is entitled to in the premises. And it is expressly agreed that if any assignment be made of any interest hereby created, the same shall be made on the said certificate, which shall thereupon be surrendered to the trustees at their office in the city of New York, and a new certificate or certificates shall thereupon be issued therefor to the proprietor or proprietors, and no sale or transfer of any interest herein shall be obligatory upon, or operate as a notice to, the said trustees of such assignment or transfer, unless the above conditions be complied with. And the said parties who are designated and appointed trustees for the objects and purposes herein expressed do, by the execution of these presents, declare their assent to the said trusts hereby created.

In testimony of their assent whereunto, the said parties have hereunto set their hands and seals, the day and year first above written.

In presence of

Exhibit B., referred to and made a part of Petitioner's Petition.

Copy Petition in partition proceedings, April Term, 1840.

To the District Court of Lee County, in the Territory of Iowa.

Your petitioners, Josiah Spalding, Archibald Gamble, Patrick Walsh, Etienne Provost, John and Edward Walsh, H. K. Ortley, Greene Erskine, Joseph Ridgway, assignee of George Patch, Herman C. Cole, Stephen Gore, John B. Saipy, Edmund H. McCabe, Hugh Tumilty, James R. McDonald, Joseph W. Walsh, John O. Rourke, Antoine Garcia, and Margaret his wife, Angelique Mattabon, formerly La Guthrie, Michael Tisson, of the city of St. Louis, and of the State of Missouri, heirs and legal representatives of Otis Reynolds, late of the city of Saint Louis, deceased, heirs and legal representatives of J. A. H. Palmer, late of Saint Louis, deceased, George H. Crossman, of the United States Army, and Antoine Le Claire, of Davenport, in the territory of Iowa, represent that they have a legal title to, and are seized in fee simple of twenty-three and one-third full shares, and five thousand one hundred and thirty-five

acres of land, in that tract of land commonly called the "Half Breed Tract," situated in Lee county aforesaid, lying between the Mississippi and Des Moines rivers, bounded on the north by a line drawn from the northwest corner of the State of Missouri, east to the Mississippi river, and containing one hundred and nineteen thousand acres, more or less, together with one full share and one-sixth of a full share in Keokuk, a village situated on said tract; the particular interests here claimed are as follows, to wit:

Josiah Spalding claims one-half of a full share under Margaret Antaya, a half-breed of the Sac and Fox nations of Indians; also one-half of a full share under Theotist Provost, a half-breed of the same nation of Indians; also one-eighth of a full share under Mary Giard, a half-breed of the same nation; also one-fourth of a full share under Francis Blondeau, a half-breed, as aforesaid.

Archibald Gamble claims one-half of a full share under Margaret Antaya, a half-breed, as aforesaid; also one-half a full share under Theotist Provost, a half-breed, as aforesaid; also one-eighth of a full share under Benjamin La Guthrie, a half-breed, as aforesaid.

Patrick Walsh claims one-half of a full share under Isadore Antaya, a half-breed, as half-breed, as aforesaid; also one-half of a full share under Benjamin La Guthrie, a half-breed, as aforesaid.

Etienne Provost claims one-half of a full share under Isadore Antaya, a half-breed, as aforesaid.

John and Edward Walsh claim the two-thirds of a full share under Maria Herbert, a half-breed, as aforesaid; also three-fifths of a full share under Pierre Jeandron, a half-breed, as aforesaid; also the one-eighth of a full share under Francis Blondeau, a half-breed, as aforesaid; also three hundred and twenty acres of land under Isaac Antaya, a half-breed, as aforesaid, being one-quarter of a claim; also six hundred and forty acres of land under Peter Courville, being one-half claim.

H. K. Ortley claims the two-fifths of a full share under Pierre Jeandron, a half-breed, as aforesaid.

Greene Erskine claims the two-thirds of a full share under Lesitte Giard, a half-breed, as aforesaid; also the one-eighth of a full share under Francis Blondeau, a half-breed, as aforesaid; also one full share under Francis Ontio, a half-breed, as aforesaid.

Joseph Ridgway, trustee of George Patch, claims one-third of a full share under Lisette Giard, a half-breed, as aforesaid.

Herman C. Cole claims the one-fourth of a full share under Francis Blondeau, a half-breed, as aforesaid.

Stephen Gore claims the one-eighth of a full share under Francis Blondeau, a half-breed, as aforesaid.

John B. Sarpy claims the one-third of a full share under Catharine Blondeau, a half-breed, as aforesaid.

Edmund H. McCabe claims the one-third of a full share under Catharine Blondeau, a half-breed, as aforesaid.

Hugh Tumilty claims one full share under Elizabeth Honoire, alias Shalts, a half-breed, as aforesaid.

James R. McDonald claims one full share under Theresa Maillot, a half-breed, as aforesaid.

Joseph W. Walsh claims the one-half of a full share under Margaret Carpenter, now Garcia, a half-breed, as aforesaid; also the one-half of a full share under Angelique La Guthrie, now Mattabon, a half-breed, as aforesaid.

John O. Rourke claims the one-half of a full share under Benjamin La Guthrie, a half-breed, as aforesaid.

Antoine Garcia, and Margaret his wife, claims the one-half of a full share in right of said wife, formerly Margaret Carpenter, a half-breed, as aforesaid.

Angelique La Guthrie, now Mattabon, claims the one-third of a full share in her own right.

Michael Tesson claims four thousand acres, more or less, and a full share to the town of Keokuk under Lisette St. Jean, alias La Perche, a half-breed, as aforesaid, being one full share.

Heirs and legal representatives of Otis Reynolds, deceased, claims the one-third of a full share under Maria Hebert, a half-breed, as aforesaid; also the one-eighth of a full share under Francis Blondeau, a half-breed, as aforesaid.

Heirs and legal representatives of J. A. H. Palmer, dec'd, claim the one-third of a full share under Catharine Blondeau, a half-breed, as aforesaid.

George H. Crossman claims the one-half of a full share under Christopher Antaya, a half-breed, as aforesaid; also the one-third of a full share under Isaac Antaya, a half-breed, as aforesaid; also one hundred and seventy-five acres of land, and one-sixth of a full share in the town of Keokuk, under Maria Antaya, a half-breed, as aforesaid.

Antoine Le Claire claims one full share under Emily Lucia, a half-breed as aforesaid; also one full share under Baptiste Joine, a half-breed as aforesaid; also one full share under Thomas Abbott, a half-breed as aforesaid; also one full share under Catharine Morgan, a half-breed; also one full share under Charlotte Janish, a half-breed; also one full share under John Morgan, a half-breed; also one full share under Catherine Watts, a half-breed; also one under Margaret Le Claire, his wife, a half-breed of the Sac and Fox nation of Indians.

And your petitioners further represent that Euphrosine Antaya, Elizabeth Hunt, Eliza O. Perkins (late Guilderslive, formerly Johnson), Mary S. Murdock (formerly Johnson), Rosilla O. Glinn (formerly Johnson), James Muir, Thomas Connelly, and Betsy Farrar, their heirs or assigns, and other persons whose names and places of residence are unknown to your petitioners, are tenants in common with your petitioners in said premises. Your petitioners therefore pray that partition of said lands may be made, or if the same cannot

be done without manifest injury, then that such other proceedings may be had in the premises as are authorized by law.

REID & JOHNSON,
Attorneys for Petitioners.

Exhibit C., referred to and made a part of Petitioner's Petition.

Copy Answer of Trustees.

SPALDING and others
v.
ANTAYA and others. } For Partition.

The answer of Samuel Marsh, William E. Lee, and Edward C. Delavan, trustees, under articles of association bearing date 22d of October, 1836 (herewith filed, marked A.), for the persons interested in said association, agreeably to the stipulations and provisions therein set forth, according to their respective interests, to the petition filed by Spalding and others against Antaya and others in this court, for partition, under the law of this territory, of the land mentioned in the petition, by their attorney F. S. Key, respectfully showeth, that they, and the persons interested in said association whom they represent, claim to be entitled to the shares and proportions of said half-breed tract, the land mentioned in said petition, set forth in the annexed list, a schedule of half-breed claims, the proofs to their title to which, and authentic copies of the conveyances by which the same are held, are herewith filed and produced to the court; and the defendants are willing that their said claims, and the claims of the other parties in this case, should be decided and adjudged by the court, and partition decreed according to law.

F. S. KEY,
For Defendants.

On which Petition appears the following indorsement, to wit:

Filed and summons issued Dec. 31st, 1856. T. S. Parvin, clerk. By A. J. Messenger, deputy.

And thereupon, to wit, on the 31st day of December, 1856, there issued from the office of the clerk of said court a writ of summons, in words and figures following, to wit:

Summons.

United States of America, District of Iowa, *ss.*

To the marshal of said district, greeting.

In the name of the President of the United States we command you to summon David W. Kilbourne, citizen of and resident in the

State and District of Iowa, if he be found in your bailiwick, to be and appear before the District Court of the United States for the District of Iowa aforesaid, at Burlington in said district, on the third Monday in the month of May next, to answer unto Charles Clagett, a citizen of the State of Maryland, of a plea of ejectment, and have then and there this writ.

Witness the Honorable J. M. Love, judge of said District [SEAL.] Court, this 31st day of December, 1856, and in the 81st year of the independence of the United States of America.

Attest, T. S. PARVIN,
Clerk.
By A. J. MESSENGER,
Deputy.

Which writ was returned into the office of the clerk of said court, with service indorsed thereon, in words as follows:

Served this writ by reading the same, and giving a true copy to the within-named David W. Kilbourne, this 14th day of Jan., 1857.

LAUREL SUMMERS,
U S. Marshal.
By FRED. FUNCK,
Deputy.

And afterwards, to wit, on the 18th day of May, 1857, defendant filed his answer, as follows:

Answer.

In District Court of the United States. Before the Chancellor.

CHARLES CLAGETT
v.
DAVID, W. KILBOURNE.

The Answer of David W. Kilbourne, Defendant, to the Bill of Complaint of Charles Clagett.

The defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as the defendant is advised is material for him to make answer unto, answers and says, that he denies all and every the allegations and statements in said bill of complaint contained, and makes this his denial as complete and specific as though he had seriatim and specifically traversed and denied specifically all the statements, averments, and allegations in said bill of complaint. He

therefore prays judgment of the court, and that said defendant may be dismissed from court at the costs of said plaintiff.

J. C. HALL,
Defendant's Solicitor.

Indorsement: Filed May 18th, 1857. T. S. Parvin, clerk. By A. J. Messenger, deputy.

And afterwards, to wit, at said May term of court, A.D. 1858, the following proceedings were had and record made, to wit:

Record.

CHARLES CLAGETT
v.
DAVID W. KILBOURNE. } Right.

Now, on this 19th day of May, 1858, this cause came on to be heard; the plaintiff appearing by George C. Dixon, his attorney, and the defendant by J. C. Hall, his attorney; and the issue being joined, to try the same came a jury, to wit: John S. Bartruff, Harvy Ray, W. C. Paine, Chas. E. Whitemarsh, William Thomas, William L. Toole, W. W. Fluke, J. A. Galiher, Beverly Searcey, John D. Cameron, James Murphey, and Charles O'Brien; twelve good and lawful men, possessing the requisite qualifications of jurors, who were duly empanelled, and tried, and sworn; and the evidence in the case having been heard and seen, the arguments of counsel and the instructions of the court, the jury retired to consider of their verdict, and returned into court the following:

We, the jury, find the title and right of possession of the land in controversy to be in the defendant.

CHARLES O'BRIAN,
Foreman.

It is therefore ordered, adjudged and decreed by the court, that said defendant David W. Kilbourne is entitled to the right of possession and title to the land mentioned and described in the plaintiff's petition, to wit, the undivided sixth part of the east half of the northeast quarter of section number twenty-six, the fractional northwest quarter of section number twenty-five, the southeast quarter of section number twenty-three, and the southwest quarter of section number fourteen, containing in all about five hundred and forty-two $\frac{6}{100}$ acres, and all situated in township sixty-five (65) north, and range five (5) west, in the county of Lee and State of Iowa, and that his title to said real estate be and the same is hereby quieted and confirmed.

It is further ordered and adjudged, that plaintiff pay the costs

and charges of this suit taxed to $, and that execution issue therefor.

And thereupon, to wit, on the 19th day of May, A.D. 1858, plaintiff filed in the office of the clerk of said court, his certain bill of exceptions, in words and figures as follows:

"*Exceptions.*"

In the United States District Court in and for the State of Iowa, Southern District. May Term, 1858.

Bill of Exceptions in Action to recover Real Estate.

CHARLES CLAGETT
v.
DAVID W. KILBOURNE.

Be it remembered, that on the trial of this case, which was an action to recover one undivided sixth part of certain real estate in said petition in this case described, the plaintiff, in order to sustain his title, introduced a complete record of the decree of partition, partitioning the Half-Breed Reservation, a copy of which is as follows:

Note by Clerk.

A copy of said complete record will be found on the following pages, and for the purpose of convenience in referring thereto, the original paging is preserved, together with the marginal references and the index.

In District Court, Lee County, Iowa Territory, 1840, 1841.

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al.

Proceedings in partition before the District Court within and for the county of Lee, and Territory of Iowa, on the eighth day
1. of May, A.D. 1841, in a certain cause, wherein Josiah Spalding et al. were plaintiffs, and Euphrosine Antaya et al. were defendants.

Be it remembered, that heretofore, to wit, on the fourteenth day of April, A.D. 1840, Josiah Spalding et al. filed in the office of the clerk of said District Court a certain petition in partition, in the words and figures following, to wit:

Petition for Partition.

April Term, 1840. To the District Court of Lee County, in the Territory of Iowa.

Your petitioners, Josiah Spalding, Archibald Gamble, Patrick Walsh, Etiene Provost, John and Edward Walsh, H. K. Ortley, Green Erskine, Joseph Ridgway, assignee of George Patch, Heman C. Cole, Stephen Gore, John B. Sarpy, Edmund H. McCabe, Hugh Fumilty, James R. McDonald, Joseph W. Walsh, John O. Rourke, Antoine Garcia and Margaret his wife, Angeline Mattabon, formerly La Guthrie, Michael Tesson, of the city of St. Louis, and the State of Missouri, heirs and legal representatives of Otis Reynolds, late of the city of Saint Louis, deceased, heirs and legal representatives of J. A. H. Palmer, late of Saint Louis, deceased, George H. Crossman, of the United States Army, and Antoine Le Claire, of Davenport, in the Territory of Iowa, represent that they have a legal title to, and are seized in fee simple of twenty-three and one-third full shares, and five thousand one hundred and thirty-five acres of land, in that tract of land commonly called the Half-Breed Tract, situated in Lee county aforesaid, lying between the Mississippi and Des Moines rivers, bounded on the north by a line drawn from
2. the northwest corner of the State of Missouri east to the Mississippi river, and containing one hundred and nineteen thousand acres, more or less, together with one full share and one-sixth of a full share in Keokuk, a village situated on said tract. The particular interests here claimed are as follows, to wit:

Josiah Spalding claims one-half of a full share, under Margaret Antaya, a half-breed of the Sac and Fox nations of Indians; also one-half of a full share, under Theotist Provost, a half-breed of the same nation of Indians; also one-eighth of a full share, under Mary Giard, a half-breed of the same nation; also one-fourth of a full share, under Francis Blondeau, a half-breed, as aforesaid.

Archibald Gamble claims one-half of a full share, under Margaret Antaya, a half-breed, as aforesaid; also one-half a full share, under Theobist Provost, a half-breed, as aforesaid; also the one-eighth of a full share, under Benjamin La Guthrie, a half-breed, as aforesaid.

Patrick Walsh claims one-half of a full share, under Isadore Antaya, a half-breed, as aforesaid; also one-half of a full share, under Benjamin La Guthrie, a half-breed, as aforesaid.

Etiene Provost claims one-half of a full share, under Isadore Antaya, a half-breed, as aforesaid.

John and Edward Walsh claim the two-thirds of a full share, under Maria Herbert, a half-breed, as aforesaid; also three-
3. fifths of a full share, under Pierre Jeandron, a half-breed, as aforesaid; also the one-eighth of a full share, under Francis

Blondeau, a half-breed, as aforesaid; also three hundred and twenty acres of land, under Isaac Antaya, a half-breed, as aforesaid, being one-quarter of a claim; also six hundred and forty acres of land, under Peter Courville, being one-half claim.

H. K. Ortley claims the two-fifths of a full share, under Pierre Jeandron, a half-breed, as aforesaid.

Green Erskine claims the two-thirds of a full share, under Lisette Giard, a half-breed, as aforesaid; also the one-eighth of a full share, under Francis Blondeau, a half-breed, as aforesaid; also one full share, under Francis Ontio, a half-breed, as aforesaid.

Joseph Ridgway, trustee of George Patch, claims one-third of a full share, under Lisette Giard, a half-breed, as aforesaid.

Herman C. Cole claims the one-fourth of a full share, under Francis Blondeau, a half-breed, as aforesaid.

Stephen Gore claims the one-eighth of a full share, under Francis Blondeau, a half-breed, as aforesaid.

John B. Sarpy claims the one-third of a full share, under Catharine Blondeau, a half-breed, as aforesaid.

Edmund H. McCabe claims the one-third of a full share, under Catharine Blondeau, a half-breed, as aforesaid.

Hugh Tumilty claims one full share, under Elizabeth Honoire, alias Shalts, a half-breed, as aforesaid.

James R. McDonald claims one full share, under Therese Maillot, a half-breed, as aforesaid.

Joseph W. Walsh claims the one-half of a full share, under Margaret Carpenter, now Garcia, a half-breed, as aforesaid;

4. also the one-half of a full share, under Angelique La Guthrie, now Mattabon, a half-breed, as aforesaid.

John O. Rourke claims the one-half of a full share, under Benjamin La Guthrie, a half-breed, as aforesaid.

Antoine Garcia and Margaret, his wife, claims the one-half of a full share, in right of said wife, formerly Margurite Carpenter, a half-breed, as aforesaid. Angelique La Guthrie, now Mattabon, claims the one-third of a full share, in her own right.

Michael Tesson claims four thousand acres, more or less, and a full share to the town of Keokuk, under Lisette St. Jean, alias La Perche, a half-breed, as aforesaid, being one full share.

Heirs and legal representatives of Otis Reynolds, deceased, claim the one-third of a full share, under Maria Hebert, a half-breed, as aforesaid; also the one-eighth of a full share, under Francis Blondeau, a half-breed, as aforesaid.

Heirs and legal representatives of J. A. H. Palmer, deceased, claim the one-third of a full share, under Catharine Blondeau, a half-breed, as aforesaid.

George H. Crossman claims the one-half of a full share, under Christopher Antaya, a half-breed, as aforesaid; also the one-third of a full share, under Isaac Antaya, a half-breed, as aforesaid; also

one hundred and seventy-five acres of land, and one-sixth of a full share in the town of Keokuk, under Maria Antaya, a half-breed, as aforesaid.

Antoine Le Claire claims one full share, under Emily Lucia, a half-breed, as aforesaid; also one full share, under Baptiste Join, a half-breed, as aforesaid; also one full share, under Thomas Abbott, a half-breed, as aforesaid; also one full share, under Catharine Morgan, a half-breed; also one full share, under Charlotte Janish, a half-breed; also one full share, under John Morgan, a half-breed; also one full share, under Catharine Watts, a half-breed; also one under Margaret Le Claire, his wife, a half-breed of the Sac and Fox nation of Indians.

And your petitioners further represent that Euphrosine Antaya, Elizabeth Hunt, Eliza O. Perkins (late Guilderslive, formerly Johnson), Mary L. Murdock, formerly Johnson, Rosella O. Gleim, formerly Johnson, James Muir, Thomas Connelly, and Betsy Farrar, their heirs or assigns, and other persons, whose names and places of residence are unknown to your petitioners, are tenants in common with your petitioners in said premises.

Your petitioners therefore pray that partition of said lands may be made, or if the same cannot be done without manifest injury, then, that such other proceedings may be had in the premises as are authorized by law.

REED & JOHNSON,
Attorneys for Petitioners.

To which petition was the following affidavit, to wit:

Affidavit.

"Ed. Johnston, on his solemn oath, says that the facts set forth in the foregoing petition are true, to the best of his knowledge and belief.

ED. JOHNSTON.

Sworn and subscribed this 14th day of April, A. D. 1840.

JOHN H. LINES,
Clerk District Court.

To which said petition and affidavit was attached the following præcipe, to wit:

Præcipe.

6. Territory of Iowa, Lee County, *set.*

District Court, April Term, 1840.

Petition for Partition.

JOSIAH SPALDING, ARCHIBALD GAMBLE, PATRICK WALSH, ETIENNE PROVOST, JOHN & EDWARD WALSH, H. K. ORTLEY, GREEN ERSKINE, JOSEPH RIDGWAY, assignee of George Patch, HERMAN C. COLE, STEPHEN GORE, JOHN B. SARPY, EDMUND H. McCABE, HUGH TUMILTY, JAMES R. McDONALD, JOSEPH N. WALSH, JOHN O'ROURKE, ANTOINE GARCIA, and MARGARET, his wife, ANGELIQUE MATTABON, formerly LA GUTHRIE, MICHAEL TESSON, heirs and legal representatives of OTIS REYNOLDS, deceased, heirs and legal representatives of J. A. H. PALMER, deceased, GEORGE H. CROSSMAN, and ANTOINE LE CLAIRE,

v.

EUPHROSINE ANTAYA, ELIZABETH HUNT, ELIZA O. PERKINS, late GILDERSLIEVE, formerly JOHNSON, MARY L. MURDOCK, formerly JOHNSON, ROSELLA O. GLEIM, formerly JOHNSON, JAMES MUIR, THOMAS CONNELLY, and BETSY FARRAR.

The clerk of the court will issue a summons in the above case, returnable according to law.

April 14th, 1840.

REED & JOHNSTONE,
Attorneys for Plaintiffs.

Which said petition, affidavit, and præcipe were indorsed by the clerk as follows, to wit: "Filed April 14th, 1840, John H. Lines, clerk District Court."

Afterwards, to wit, on the day of filing the petition aforesaid, the following writ of summons was issued from the office of the clerk of the court aforesaid, to wit:

Summons.

7. Territory of Iowa, Lee County, *set.*

The United States of America, to the sheriff of said county, greeting: You are hereby commanded to summon Euphrosine Antaya,

Elizabeth Hunt, Eliza O. Perkins, late Gildersleve, formerly Johnson, Mary L. Murdock, formerly Johnson, Rosella O. Glenne, formerly Johnson, James Muir, Thomas Connelly, and Betsy Farrar, if to be found in your county, to be and appear before the District Court for the said county, on the first day of the next term thereof, to be begun and holden within and for said county, at the court-house in Fort Madison, on the fourth Monday of April instant, to answer Josiah Spalding, Archibald Gamble, Patrick Walsh, Etienne Provost, John & Edward Walsh, H. K. Ortly, Green Erskine, Joseph Ridgway, assignee of George Patch, Herman C. Cole, Stephen Gore, John B. Sarpy, Edmund H. McCabe, Hugh Tumilty, James R. McDonald, Joseph W. Walsh, John O'Rourke, Antoine Garcia, and Margaret, his wife, Angelique Mattabon, formerly La Guthrie, Michael Tesson, heirs and legal representatives of Otis Reynolds, deceased, heirs and legal representatives of J. A. H. Palmer, deceased, George H. Crossman, and Antoine Le Claire, in a petition for partition exhibited against them by the persons last aforesaid. Hereof fail not, and have you there this writ.

Witness the Hon. Charles Mason, judge of our said court, and sealed with the temporary seal thereof, this 14th day of April, A. D. 1840.

[SEAL.]

8. JOHN H. LINES,
Clerk District Court.

Afterwards, to wit, on the 16th day of April, 1840, the sheriff of said county returned said writ of summons indorsed as follows, to wit: Sheriff's return. "The within-named defendants not found. April 16th, 1840. Sheriff's fees $5. B. W. Gillock, sheriff.

Afterwards, to wit, at the April term, A. D. 1840, of said District Court, to wit, on the twenty-second day of April, A. D. 1840, the following proceedings were had, to wit:

Order of Publication.

Petition for Partition.

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al.

And now come the plaintiffs, by Reid & Johnston, their attorneys, and move the court for a continuation, and an order of publication, as the law directs. Whereupon the same is ordered by the court.

Afterwards, to wit, at the October Term of said District Court, 1840, to wit, on the ninth day of October, A. D. 1840, the following proceedings were had, to wit:

On this day came the said petitioners, by Reid & Johnston, their attorneys, and made proof of the publication of the notice ordered to be made at the April Term, 1840, of said court, which notice and proof are in the words and figures following, to wit:

Publication in the Iowa Territorial Gazette and Advertiser.

9. Territory of Iowa, Lee County, *set.*

District Court for said County, April Term, 1840.

Petition for Partition.

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al.

Notice is hereby given, that a petition was filed on the 14th day of April, A. D. 1840, in the District Court of Lee County aforesaid, by Josiah Spalding, Archibald Gamble, Patrick Walsh, Etienne Provost, John and Edward Walsh, H. K. Ortly, Green Erskine, Joseph Ridgway, assignee of George Patch, Herman C. Cole, Stephen Gore, John B. Sarpy, Edmund H. McCabe, Hugh Tumilty, James R. McDonald, Joseph W. Walsh, John O'Rourke, Antoine Garcia, and Margaret, his wife, Angelique Mattabon, formerly La Guthrie, Michael Tesson, heirs and legal representatives of Otis Reynolds, deceased, heirs and legal representatives of J. A. H. Palmer, deceased, George H. Crossman, Antoine Le Claire, as petitioners, and against Euphrosine Antaya, Elizabeth Hunt, Eliza O. Perkins (late Gildersleve, formerly Johnson), Mary L. Murdock, formerly Johnson, Rosella O. Gleim, formerly Johnson, James Muir, Thomas Connelly and Betsy Farrar, as defendants, and is now pending, wherein said petitioners pray that a partition be made of the following real estate, to wit: All that tract of land commonly called the Half-Breed Tract, situated in Lee county aforesaid, lying between the Mississippi and Des Moines rivers, bounded on the north by a line drawn from the northwest corner of the State of Missouri, east to the Mississippi river, and containing one hundred and nineteen thousand acres, more
10. or less. And the said defendants and all other persons interested in said property herein described, are required to appear and answer to said petition, on or before the next term of the District of Lee County aforesaid, to be begun and holden on the first Monday of October next, or the proceedings had in the cause therafter will be binding and conclusive on them forever.

JOHN H. LINES,
D. C.

REID & JOHNSTON,
Attorneys for Plaintiffs.

Affidavit of Publication.

Territory of Iowa, Lee County, *ss.*

Personally appeared before me John H. McKinney, who being duly sworn, upon his oath deposes and says, that he is the publisher of the Iowa Territorial Gazette and Advertiser, published at the city of Burlington, the seat of government of said Territory, and that the above notice hereto attached has been published in said paper for twelve successive weeks immediately preceding this date.

J. H. McKINNEY.

Subscribed and sworn to before me this 3d day of October, 1840.

JOHN H. LINES,
Clerk.

Which said notice and affidavit were indorsed as follows, to wit: Filed October 9th, 1840, John H. Lines, clerk, by Edwin Guthrie, deputy.

Afterwards, to wit, on the day and year last aforesaid, the following proceedings were had, to wit:

Appearance of Mary Palmer, and others.

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al. } In Chancery.

This day came Mary Palmer, Hannah Evans, Elizabeth Wheeler, Sarah Goff Raynor, Thomas Palmer, and Henry G. Palmer, by their attorneys, Reid & Johnston, and moved the court that their names may be inserted in the petition for partition in this case, as the legal heirs and representatives of Samuel Palmer, which is ordered by the court.

11.

Afterwards, to wit, on the 10th day of October, A. D. 1840, the following proceedings were had to wit:

Appearance of Chas. Thompson, John W. Smith, and Dalziel Smith.

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al. } In Chancery.

And now, on this day came Charles Thompson, John W. Smith, and Dalziel Smith, by their attorney, Alfred Rich, and move the court that they may be made defendants in this cause, and that they have until next Tuesday to file their answer, which is ordered accordingly.

Afterwards, to wit, on the twelfth day of October, A.D. 1840, the following proceedings were had, to wit:

Appearance of Edwin Manning.

SPALDING and others
v.
ANTAYA and others.

Petition for Partition.

And now comes Edwin Manning, by his attorney W. Henry Starr, and with leave of the court, enters his appearance to the petition of said plaintiffs, and time is given him until the next term of this court to file his answer.

12. Afterwards, to wit, on the day and year last aforesaid the following proceedings were had to wit:

Appearance of Wm. McDaniel and Uriel Wright.

SPALDING and others
v.
ANTAYA and others.

Petition for Partition.

And now comes William McDaniel and Uriel Wright, by their attorney, W. Henry Starr, and enter their appearance to plaintiff's petition, and on motion of their said attorney, it is ordered by the court that time be extended to them till the next term of this court to file their answers.

Also the following proceedings, to wit:

Appearance of Henry T. Darrah.

SPALDING and others
v.
ANTAYA and others.

Petition for Partition.

And now comes Henry T. Darrah, by W. Henry Starr, his attorney and enters his appearance, as defendant, to plaintiff's petition, and, on motion, it is considered by the court, that he have till the next term of this court to file his answer.

Afterward, to wit, on the thirteenth day of October, A.D. 1840, the following proceedings were had, to wit:

Appearance of Jehiel Wright, Wm. McDaniel, and Henry T. Darrah.

JOSIAH SPALDING and others
v.
EUPHROSINE ANTAYA and others.

Petition.

And now, on this day this cause came up for hearing, and thereupon came Jehiel Wright, William McDaniel, and Henry T. Darrah, by their attorney, William Henry Starr, and entered their appearance to the partition of the foregoing plaintiffs, and asked
13. of the court further time to file their answers, until the next term of this court, whereupon it was ordered by the court, that the above suit stand continued, and that all who have a right to become defendants to the same, have until the first day of the next term of this court to answer the plaintiff's petition.

Afterwards, to wit, on the 13th day of October, A.D. 1840, Eliza Hunt, Rosella O. Gleim, formerly Johnson, and Edgar H. Gleim, her husband, Mary L. Murdock, formerly Johnson, and Francis B. Murdock, her husband, and Eliza Perkins, late Gildersleve, formerly Johnson, and David Perkins, her husband, some of whom are named as defendants in said petition, filed in the office of the clerk of said District Court their answers to said petition, in the words and figures following, to wit:

Answer of Eliza Hunt, Rosella O. Gleim, and others.

District Court of Lee County.

October Term, A.D. 1860.

JOSIAH SPALDING and others
v.
EUPHROSINE ANTAYA and others.

Petition.

Eliza Hunt and Rosella O. Gleim, formerly Johnson, and Edward H. Gleim, her husband, Mary L. Murdock, formerly Johnson, and Francis B. Murdock, her husband, and Eliza Perkins, late Gildersleve, formerly Johnson, and David Perkins, her husband, some of whom are named as defendants in the above-entitled cause, come into court, by Reid & Johnson, their attorneys, and state the amount of interest which they hold in the half-breed lands in Lee county, to be as follows, to wit: Eliza Hunt is entitled to one full share or portion in these lands in her own right, she being a half-
14. breed of the Sac or Fox nations of Indians; Rosella O. Gleim, and Edgar H. Gleim are entitled to one full share

or portion in said lands, in right of the said Rosella, she being a half-breed of said tribe of indians; Mary L. Murdock, and Francis B. Murdock, are entitled to one full share or portion in these lands, in right of said Mary, she being a half-breed of said tribe of Indians; Eliza Perkins, and David Perkins are entitled to one full share in these lands, in right of said Eliza, she being a half-breed of said tribe of Indians.

REID & JOHNSTON,
Attorneys for E. Hunt and others.

Which said answer is indorsed in the words and figures following, to wit: Filed Oct. 13th, 1840. John H. Lines, clerk D. C.

Afterwards, to wit, on the twelfth day of March, A.D. 1841, William Phelps, E. D. Ayres, William Gillis, Henry McKee, James L. Schoolcraft, Samuel Abbott, Abraham Wendall, G. V. Denniston, John C. Ward, Wilson L. Overall, and John Wright, by their attorneys, Reed & Johnston, filed in the office of the clerk of said District Court their answer to the petition aforesaid, in the words and figures following, to wit:

Answer of William Phelps, E. D. Ayres, and others.

District Court, Lee County. April Term, 1841.

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al. } Partition.

William Phelps, Ebenezer D. Ayres, William Gillis, Henry McKee, James L. Schoolcraft, Samuel Abbott, and Abraham Wendall, Wilson L. Overall, John Wright, Gerrit V. Denniston, and John C. Ward, come into court by Reid & Johnston, their attorneys, and state the amount of interest which they hold in the half-breed lands in Lee County to be as follows, to wit:

William Phelps claims to be entitled to one full share or portion in these lands, in right of A-she-co-wa, a half-breed of the Sac and Fox nations of Indians, as will appear by his conveyance filed. William Phelps claims to be entitled to one full share or portion in these lands, in right of Mack-ta-wa-nac, a half-breed of the Sac and Fox nation of Indians, as will appear by his conveyance filed. Ebenezer D. Ayres claims to be entitled to all the right and interest of Eustace Cardinal, being one-half share, the son of Elizabeth Cardinal, formerly Elizabeth Antaya, a half-breed of the Sac and Fox nations of Indians, as will appear by an instrument of writing filed. William Gillis claims to be entitled to a full share or portion in these lands, in right of Louis Butaltotte, a half-breed of the Sac or Fox tribes of Indians, as will appear by his conveyance filed. Henry McKee claims to be entitled to a full share or portion in these

lands, in right of Louis Sauville, a half-breed of the Sac or Fox nations of Indians, as will appear by his conveyance filed. Wilson L. Overall claims to be entitled to one-fourth of a full share or portion in these lands, in right of Mary St. Amant, formerly Blondeau, a half-breed of the Sac or Fox tribe of Indians, as will appear by a copy of conveyance filed. Wilson L. Overall claims to be entitled

16. to one-third of a full share or portion in the half-breed lands, in the right of Isaac Antaya, a half-breed of the Sac or Fox tribe of Indians, as will appear by conveyance filed. Wilson L. Overall claims to be entitled to one hundred and seventy-five acres in the half-breed tract, and one-sixth of an interest, or share, or portion in the town of Keokuk, under Peter Courville and Maria his wife, formerly Maria Antaya, she being a half-breed of the Sac or Fox tribes of Indians, as will appear by conveyance filed. John Wright claims to be entitled to one-fourth of a full share or portion in the half-breed lands, in the right of Charles Munar and Francoise his wife, formerly Francoise Hubert, through Isaac K. Campbell, the said Francoise being a half-breed of the Sac and Fox nation of Indians, as will appear by conveyance filed. Garret V. Denniston claims to be entitled to one-half of a full share or portion in the half-breed lands, in right of Henry Diacon and Sophia his wife, otherwise Sophia Dumont, through La Graves; she the said Sophia being a half-breed of Sac or Fox nations of Indians, as will appear by conveyance filed. John C. Ward claims to be entitled to one-half of a full share or portion in the half-breed lands, in right of Henry Diacon and Sophia his wife, otherwise Sophia Dumont, through La Graves; she the said Sophia being a half-breed of the Sac or Fox tribes of Indians, as will appear by the conveyance filed. James L. Schoolcraft claims to be entitled to one-half of a full share or portion in the half-breed lands, in right of Louis Desoynier, through George Johnston; he the said Desoynier being a half-breed of the Sac or Fox tribe of Indians, as will appear by con-

17. veyance filed. Samuel Abbott and Abraham Wendel claim to be entitled to the one-half of a full share or portion in the half-breed lands, in right of Louis Desoynier, through George Johnson; the said Desoynier being a half-breed of the Sac or Fox nation of Indians, as will appear by the conveyance filed.

REID & JOHNSTON,
Attorneys for Phelps et al.

Which said answer was indorsed as follows, to wit: Filed 12th March, A.D. 1841. O. S. X. Peck, clerk.

Afterwards, to wit, on the 26th day of April, A.D. 1841, to wit, at the April term of said District Court, the following answer to said petition was filed, to wit:

Answer of Silas Andrews and Christopher R. Comstock.

Territory of Iowa, County of Lee, *ss.*

District Court. April Term, A.D. 1841.

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al. } Partition.

And now come Silas Andrews and Christopher R. Comstock, two of the unknown defendants against whom the said plaintiffs have filed their bill in the District Court aforesaid, praying for a partition of certain lands, commonly called the half-breed lands; and the said Silas Andrews and Christopher R. Comstock claim one entire interest in said land, by purchase from William McBride; the said McBride claiming by purchase from Pas-o-qua, heirs and legal representatives of Elizabeth Hunt, deceased; which said Elizabeth Hunt the said Andrews and Comstock claim to have been a half-breed, and entitled to a claim under the reservation made by the treaty for the benefit of the Sac and Fox Indians. And the said Silas
18. Andrews and Christopher R. Comstock, by William H. Starr, their attorney, file herewith authentic copies of the conveyances under which they claim said interest, and pray to be made parties to said partition.

WILLIAM H. STARR,
For Andrews & Comstock.

Which said answer was indorsed as follows, to wit: Filed April 26th, A.D. 1841. O. S. X. Peck, clerk.

Afterwards, to wit, on the day and year last aforesaid, the following order was made, to wit:

Order of Court.

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al. } Partition.

On motion of A. Rich, ordered by the court, that John H. Lines, William Smith, D. Smith, John Smith, William H. Smith, and Charles Thompson have until Friday next to file their answer herein.

And on the day and year aforesaid the following order was made, to wit:

Order of Court.

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al. } Partition.

On motion of H. W. Starr, ordered by the court, that Uriel Wright, Henry T. Darrah, William McDaniel, and Edwin Manning have leave until Friday next to file their answers herein.

Afterwards, to wit, on the 8th day of May, A.D. 1841, the following order was made, to wit:

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al. } Partition.

Order of Court.

On motion of his attorney it is ordered by the court that Hugh T. Reid be appointed guardian ad litem for James Muir, one of the parties in this suit.

Afterwards, to wit, on the day and year last aforesaid, the following proceedings were had, to wit:

19. JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al. } Partition.

Proof of Publication of Notice to take Depositions.

On this day came James R. McDonald, Etienne Provost, Green Erskine, P. Walsh, John O. Rourke, J. W. Walsh, Pierre Leon Mattabon, Michael Tesson, Antoine Garcia, Francis B. Murdock and Mary L. Murdock, E. H. Gleim and Rosella O. Gleim, parties to this suit, and made proof of publication of notice to take depositions to perpetuate testimony in this case.

Afterwards, to wit, on the eighth day of May, A. D. 1841, the following answers to the said petition was filed, to wit:

District Court, Lee County.

SPALDING et al.
v.
ANTAYA et al.

Answer of John Smith, Wm. Smith, and others.

The answer of John Smith, William Smith and Dalizil Smith, Charles Thompson, William Price, John H. Lines, William H. Smith,

Henry Brouse, and the heirs of Nathaniel Knapp, to the petition of Spalding et al. *v.* Antaya et al., in this court for partition, under the law of this territory, of the land mentioned in said petition by their attorney, Rich, respectfully represent that they claim to be owners, and entitled to the shares and portions of said half-breed tract (the land mentioned in said petition), set forth in the annexed list or schedule of half-breed claims. The proofs to the title to which claims are herewith filed and produced to court, and these respondents are willing that their said claims, and the claims of other parties herein, may be adjudged by the court, and partition de-
20. creed according to law.

RICH,
Attorney for Respondents.

John H. Lines claims one full share under Mi-seth-e-quois, and also one full share under Susan Le-pant.

William Smith, Dalisel Smith, and John Smith, claim three full shares, to wit: one full share under Mas-wa-quois, one full share under Ha-la-we-quois, and one full share under Wa-po-ke-chuck.

Charles Thompson claims one full share under Pierre Antaya.

William Price and his wife claim one full share in right of his wife.

William H. Smith claims one and one-half shares under Na-sa-wisset and Wa-pe-pe, also one share under Mo-wash.

Henry Brouse claims one-eighth of a full share.

The heirs of Nathaniel Knapp claim two full shares and $\frac{7}{8}$ of one full share, to wit: one-half of a full share under Wa-pa-shap-o-mack, one full share under Ne-a-na-wa-qua, one full share under Pun Boyra, $\frac{7}{8}$ of one share under Melo-quoit.

Which said answers and schedule were indorsed as follows, to wit: Filed 8th May, A. D. 1841. O. S. X. Peck, clerk.

The following answer and schedule were filed the day and year last aforesaid, to wit:

SPALDING and others
v.
ANTAYA and others. } For Partition.

Answer of Augustus Gonville and B. F. Messenger.

21. The answer of Augustus Gonville and Benjamin Franklin Messenger to the petition of Spalding and others against Antaya and others, in this court for partition under the law of this territory, of the land mentioned in said petition, by their attorney, Philip Viele, respectfully showeth, that they claim to be entitled to the shares and proportions of said half-breed tract (the land men-

tioned in said petition), set forth in the annexed list or schedule of the half-breed claims; the proofs of their title to which, and authentic copies of conveyances by which the same are held, are herewith filed and produced to the court, and these defendants are willing that their said claims, and the claims of the said petitioners, and of the other parties in this case, should be decided and adjudged by the court, and partition decreed according to law.

PHILIP VIELE,
Attorney.

Schedule of half-breed claims of Augustus Gonville and B. F. Messenger.

Augustus Gonville, in his own right as a half-breed, one share.
B. Franklin Messenger, under Maurice Gonville, one share.

PHILIP VIELE,
Attorney.

Which said answer and schedule are indorsed as follows, to wit: Filed 8th May, A. D. 1841. O. S. X. Peck, clerk.

Afterwards, to wit, on the day and year aforesaid, the following answer to said petition was filed, to wit:

District Court, Lee County, April Term, 1841. Iowa Territory.

SPALDING and others
v.
ANTAYA and others.
} For Partition.

Answer of Abijah Fisher, D. W. Kilbourne, and others.

The Answer of Abijah Fisher, D. W. Kilbourne, and Henry S. Austin.

22. D. W. Kilbourne, and Henry S. Austin, and Edward Kilbourne, and John Bertram, to the petition of Spalding and others against Antaya and others, in this court for partition, under the laws of this territory, of the land mentioned in the said petition, by their attorney, H. T. Reid, respectfully showeth, that they claim to be entitled to the shares and proportions of the said half-breed tract (the land mentioned in said petition), set forth in the annexed list or schedule of half-breed claims; the proofs of their title to which, and authentic copies of the conveyances by which the same are held, are herewith filed and produced to the court; and these defendants are willing that their said claims, and the claims of the said petitioners, and of the other parties in this case, should be decided and adjudged by the court, and partition decreed according to law.

H. T. REID,
Attorney for Kilbourne and others.

Schedule of half-breed claims of Austin, Kilbourne, Kilbourne and Bertram, and Abijah Fisher.

Abijah Fisher, under Baptiste Bissonette, three-fourths of a share.

D. W. Kilbourne and Henry S. Austin, under Maw-qua-pet-chawa Bissonett, one-fourth of a share.

D. W. Kilbourne and Henry S. Austin, under Victory Pethial, one share.

Edward Kilbourne, under Puck-ah-ni, one-half of a share.

John Bertram, under Les-eti Lasure, one-half of share.

Which said answer and schedule were indorsed as follows, to wit: Filed 8th of May, A. D. 1841. O. S. X. Peck, clerk.

23. Afterwards, to wit, on the day and year aforesaid, the following answers were filed in said court, to wit:

District Court. April Term, 1841.

SPALDING and others
v.
ANTAYA and others. } Partition.

Answer of James Manning, Sheldon Norton, and others.

The answer of James Manning, Sheldon Norton, Edwin Manning, Uriel Wright, Henry T. Darrah, and William McDaniel, and Samuel Hearn, to the petition filed by Spalding and others against Antaya and others in this court for partition, under the laws of this Territory, of the lands mentioned in said petition, by Henry W. Starr, their attorney, respectfully showeth, that they claim to be entitled to the shares and proportions of said half-breed tract, the land mentioned in said petition set forth in the annexed list or schedule of half-breed claims, the proof of their title to which and authentic copies of conveyances by which the same are held are herewith filed and produced to the court; and these defendants are willing said claim, and the claims of said petitioners and the other parties in this case, should be decided and adjudged by the court, and the partition decreed according to law.

HENRY W. STARR,
Defendant's Attorney.

Schedule.

James Manning and Sheldon Norton claim one-half of one full share in the half-breed Sac and Fox reservation, in right of the late

Mary Comville, late Mary Lapointe, formerly Mary Antaya or Antayer, daughter of Pierre or Peter Antaya, a white man and a Sac or Fox woman. Edwin Manning claims one-eighth part of two whole shares in said reservation in right of Percuma or Pecuma,
24. wife of Pour-pourte-quesa, the said Percuma or Pecuma being a half-breed of the Sac and Fox tribes of Indians, and also sole heir of her deceased brother, who was also a half-breed Sac and Fox. Samuel Hearn and James Manning claim, as jointly and equally interested, one-half of the whole interest of Percuma or Pecuma, the wife of Por-quesa, which she owned in her own right, and one-half of her interest in right of and as sole heir of her deceased brother. Uriel Wright, Henry T. Darrah, William McDaniel, claim as follows: One share in said half-breed reservation in right of Felisite, Louisee, or Jusonse, before marriage Felisite Dupior, afterwards married to Paul G. Luene, or Jusonse; three-fourths of one entire share in right of Mary Bell, wife of Tunis Bell. The interest of Henry T. Darrah is five-ninths of the above interests. The interest of Uriel Wright is one-ninth of the foregoing interest. The interests of said Wright and McDaniel are three-ninths as trustees.

HENRY W. STARR,
Defendant's Attorney.

Which said answer is indorsed as follows, to wit: Filed May 8th, 1841. O. S. X. Peck, clerk.

Afterwards, to wit, on the day and year last aforesaid, the following answer was made, to wit:

Answer of James L. Burtis, Margaret Farrar, and Cyrus Peck.

District Court Lee County. April Term, A.D. 1841.

JOSIAH SPALDING and others
v.
EUPHROSINE ANTAYA and others. } Partition.

James L. Burtis, Margaret Farrar, a minor under the age of twenty-one years, by Sophia Farrar, her guardian, and Cy-
25. rus Peck, come into court, by Reed and Johnston, their attorneys, and state the amount of interest which they hold in the half-breed lands in Lee county to be as follows, to wit:

James L. Burtis, who claims through Stephen H. Burtis, claims to be entitled to one full share or portion in these lands in right of Therese St. Anone, formerly Therese Bell Farman, a half-breed of the Sac or Fox nations of Indians, as will appear by his conveyance filed; Margaret Farrar, by her guardian, Sophia Farrar, claims to

be entitled to two full shares or portions in these lands in right of Betsey Farrar and Mary Farrar, deceased, both half-breeds of the Sac and Fox nations of Indians, the said Margaret who thus claims through Betsy and Mary Farrar, her deceased sisters, having been born since the treaty of 1824, by which said lands were reserved to said half-breeds; Cyrus Peck claims to be entitled to one-eighth part or portion of a full share in these lands, in right of Charlotte Carron, a half-breed of the Sac and Fox nations of Indians, through David W. Kilbourne and Harriet, his wife, as will appear by his conveyance filed; which said answer was indorsed: Filed May 8th, 1841. O. S. X. Peck, clerk.

REID & JOHNSTON,
Attorneys for Burtis et al.

Afterwards, to wit, on the day and year last aforesaid, the following answer was filed, to wit:

Answer of Thomas Conelly and James Muier.

District Court. April Term, A.D. 1841.

JOSIAH SPALDING and others
v.
EUPHROSINE ANTAYA and others. } Partition.

26. Thomas Conelly and James Muier, by H. T. Reid, his guardian ad litem, he being a minor under the age of twenty-one years, by Reid & Johnston, come into court and state the amount of interest they hold in the half-breed lands in Lee county to be as follows, to wit:

Thomas Connelly claims to be entitled to one full share or portion in said lands in his own right, he being a half-breed of the Sac and Fox nations of Indians.

James Muir, by H. T. Reid, his guardian ad litem, claims to be entitled to one full share in said lands in his own right, he being a half-breed of the Sac and Fox nations of Indians.

REID & JOHNSTON,
Attorneys for Connelly and Muir.

Which said answer was indorsed as follows, to wit: Filed 8th May, A.D. 1841. O. S. X. Peck, clerk.

Afterwards, to wit, on the day and year last aforesaid, the following proceedings were had, to wit:

Answer of Samuel Marsh, William E. Lee, and Edward C. Delavan, Trustees, &c.

SPALDING and others
v.
ANTAYA and others. } For Partition.

The answer of Samuel Marsh, William E. Lee, and Edward C. Delavan, trustees under articles of association, bearing date 22d of October, 1836 (herewith filed, marked A.), for the persons interested in said association, agreeably to the stipulations and provisions therein set forth, according to their respective interests, to the petition filed by Spalding and others against Antaya and others in this court, for partition, under the law of this Territory, of the land
27. mentioned in the petition, by their attorney, F. S. Key, respectfully showeth, that they, and the persons interested in said association, whom they represent, claim to be entitled to the shares and proportions of said half-breed tract, the land mentioned in said petition, set forth in the annexed list or schedule of half-breed claims, the proofs to their title to which, and authentic copies of the coyveyances by which the same are held, are herewith filed and produced to the court, and the defendants are willing that their said claims, and the claims of the said petitioners, and of the other parties in this case, should be decided and adjudged by the court, and partition decreed according to law.

F. S. KEY,
For Defendants.

Schedule of Lands claimed by the New York Company.

List or schedule of half-breed titles claimed by Samuel Marsh, William E. Lee, and Edward C. Delavan, trustees for the New York claimants, to wit:

An-ah-pe-ah, or Louisa Gates, one portion.
Pack-e-ta-chenier, one portion.
Wash-e-o-qua, one portion.
A-ke-ka-ni-umi, one portion.
Kew-e-qua, one portion by
Paw-ni-unine and Wa-pe-sha-qua-ma-qua ma-e-qua, one portion.
Ah-ket-tay, one portion by Wa-po-sha-qua-mak-hui.
Maw-ka-nak, one portion.
Margaret Schoonberger, formerly Margaret Kratier, one portion, by Jean Schoonberger, heir and legal representative; Ket-was-sah, one portion.
Os-koo-thok-wah-co, one portion.
Wah-pap-way, one portion; Wa-she-pa-pe, one portion.

Pa-mi-poc-ko Bailitoh, one portion.

Lisch-mai-ain, one portion; Pac-qual-skosh-koh, one portion.

Wasah-pe, Louis Grand, one portion.

28. Ma-she-ke-ne, Raisin, one portion.

Wash-wa-co, De Maray, one portion.

Elizabeth Antaya, $\frac{2}{3}$ by Elisa Cardinal and Eustace Cardinal. Heirs Thomas Abbott, one share.

Antoine Canon, $\frac{3}{4}$ by She-ka-na-shub-o-may-tag and Angelica Canon, heirs.

Wah-mae-che-sale, one portion by Wash-ke-sa, son and heir; Mawni, one portion, by Oc-qua-sake, sole heir.

Nas-se-wisset, one portion; Wa-wa-que, one portion.

Amelia De Loine, formerly Amelia Gonville, one portion; Mac-i-nah, one portion.

Tac-o-co, one portion; Co-sho-be-ah, one portion.

Pa-pe-no-ah, Ganlette, one portion; Muk-e-ho, one portion; Se-pe-nah, one portion; Mary Tolman, formerly Mary Dugue, one portion.

Archanque Smith, formerly Archanque La Pearch, one portion; Mary La Pearch, one portion by Archanque Smith and Brishnell, and wife, as heirs.

Agatha La Pearch, one portion by Archanque Smith, and Brishnell, and wife, as heirs.

Jane Muir, one-half by A. Hood and wife, as heirs.

Ma-chi-ni, two-thirds by Keshus and Kepasqua, as heirs.

A-no-nec, one portion; Che-pa-tol-igua, one portion.

Mas-se-pauh, one portion; Sae-i-na-qua-pa, one portion.

Louisa Hood, formerly Louisa Muir, six hundred and forty acres of land, and all their interests in Keokuk; Waw-sai-to-quois and Pe-ah-two-to-nobe, two portions; Kish-ke-tum, one portion.

Ke-wah-che, one by Ma-che-ni, sole heir.

Mak-sese, one by Ma-che-ni, sole heir.

Ka-no-sa, one portion, by Na-mah-quah-taw-way, sole heir.

Nap-we, one portion; She-peck, one portion.

O-co-sa, one portion by Nap-wa and She-puck.

29. Louisa Brishnell, formerly Louisa St. Mo La Perche, interest in Keokuk, and all remaining interest in 4320 acres sold; Christopher Antaya, one-third; Isaac Antaya, one and one-half acres in Keokuk.

Ke-shuo, one portion; Ka-pas-qua, one portion.

Na-she-na, one portion; No-shaw-eum, one portion.

Mas-sa-se-pah, one portion; Pash-ke-sole-chune, one-half portion; Ut-tak-wal, one portion.

Asb-e-cum-e-verbois, one portion; Eustace Cardinal, one portion; Unknown, $\frac{1}{2}$ by A. Smith, do. $\frac{1}{4}$ by F. Wilcox.

F. S. KEY,
For Defendants.

Articles of Association of the New York Company.

This indenture, made the twenty-second day of October, one thousand eight hundred and thirty-six, by and between the several persons whose names and seals are hereunto subscribed, that is to say, Joshua Aiken of Peoria, and Isaac Galland of Commerce, in the State of Illinois; Samuel Marsh, Benjamin F. Lee, William E. Lee, George P. Shipman, Henry Seymore, all of the city of New York; Edward C. Delavan and Erastus Corning, of the city of Albany. Whereas, the said Joshua Aikin, Robert E. Little, and Isaac Galland, as agents, acting for and in behalf of the persons and parties hereinbefore named, have purchased certain lands, situate, lying, and being in Wisconsin territory, between the Mississippi and Des Moines rivers, part of the tract reserved in a certain treaty made on the fourth day of August, one thousand eight hundred
30. and twenty-four, between the United States and the Sac and Fox nation, or tribes of Indians, for the use of the half-breeds of said nations, or tribes of Indians, amounting in the whole to the sum of about twenty thousand dollars; the title to which said premises already purchased, is at present in the name of Eli Goodwin, Benjamin F. Lee, William E. Lee, Joshua Aikin, and Isaac Galland, all parties hereto, except the said Eli Goodwin. And the said Aikin and Little are authorized by the other persons and parties to these presents, to invest a further sum in their discretion in the purchase of other portions of the same premises, for and on account of the parties hereto as hereinafter defined, from time to time, as they may have opportunity, not exceeding in the whole the sum of seventy-five thousand dollars, including the above twenty thousand dollars. The title to all which premises is intended to be vested in the persons hereinafter named, as joint tenants, and not as tenants in common, for the benefit of the parties hereinafter mentioned.

Now, therefore, in consideration of the premises, and in order to the more efficient, careful, and advantageous management of the said property, and for the greater facility in obtaining titles, and ascertaining the quantity to which, by such purchases, the parties hereto may be entitled; and also in view of dividing the said premises among and to the several persons and parties who may be entitled to portions thereof by virtue of these presents, in fee simple, as tenants in common, the said parties hereto individually, and not jointly, each for himself, his heirs, executors, administrators, and assigns, covenants and agrees to and with the others, and each of them, and to and with them, and each of their heirs, executors, administrators, and assigns, respectively as follows, in respect
31. to the said property so purchased, or hereafter to be purchased, that is to say,

Firstly. That the title to the property already purchased, shall be conveyed to and duly vested in Joshua Aikin of Peoria, and Isaac

Galland of Commerce, in the State of Illinois, Samuel March, and William E. Lee of the city of New York, and Edward C. Delavan of the city of Albany, as joint tenants, and not as tenants in common, in trust for the persons and parties interested therein, as hereinafter defined. And the title to all lands hereafter purchased or acquired by the said Aikin and Little in the said district of country, shall be taken in the names of the said trustees as joint tenants, and not as tenants in common, for the benefit of the parties hereto; and it is hereby mutually agreed and understood by and between the parties hereto, that the interest and right of the said parties in and to the premises already purchased, or hereafter to be purchased, in pursuance hereof, is as follows, that is to say, the whole into forty-eight shares or parts to be divided; the said Joshua Aikin and George P. Shipman jointly nineteen undivided forty-eighth parts of the whole of said premises; the said George P. Shipman in his own right two undivided eighth parts; the said Isaac Galland eighth undivided forty-eighth parts; the said Edward C. Delavan four undivided forty-eighth parts; the said Samuel Marsh two undivided forty-eighth parts; the said Benjamin F. Lee three undivided forty-eighth parts; the said William E. Lee six undivided forty-eighth parts; the said Erastus Corning two undivided forty-eighth parts; the said Henry Seymour two undivided forty-eighth parts.

Secondly. And the parties hereto mutually covenant and agree to and with each other, and each for himself, to assume and pay on account of and for the purchase-money, expenses, and im-
32. provements of said premises, purchased and to be purchased, in the following shares and proportions, that is to say: the said Isaac Galland eight forty-eighth parts of the whole, the said Edward C. Delavan eight forty-eighth parts, the said Samuel Marsh four forty-eighth parts, the said Henry Seymour four forty-eighth parts, the said B. F. Lee four forty-eighth parts, the said William E. Lee eight forty-eighth parts, the said Shipman & Aiken, jointly, four forty-eighth parts, the said George P. Shipman, in his own right, four forty-eighth parts, and the said Erastus Corning four forty-eighth parts, at such time as the same shall be required to meet the drafts and notes already made, or which hereafter may be made, by the said Aikin and Little, or either of them, or by any other agent or agents duly authorized, on account of the premises already purchased or hereafter to be purchased under these presents; and for this purpose the parties hereto respectively agree to accept and pay any draft or drafts which the said trustees, their agent or agents, or their treasurer, by them duly authorized and appointed, shall at any time make upon them or any of them, for their shares or interests as aforesaid.

Thirdly. And the parties hereunto mutually covenant and agree, that the said trustees, or a majority of them, shall have power, and it shall be their duty, 1st, to cause the title to said lands and pro-

perty to be thoroughly examined and established, in such form of proceeding as they may be advised to be proper to protect the parties in intreest against any loss or question on account thereof.

2. To cause the land purchased to be surveyed, so that the exact quantity of land acquired by the parties hereto, by the purchases already made or hereafter to be made, as herein provided, shall be ascertained.

3. Out of the said premises they shall cause to surveyed and laid out such sites for towns, villages, and cities, as they may
33. deem eligible and important for such purposes; of all which sites they shall have surveys and maps made, and shall furnish each of the parties to these presents with copies thereof. They shall also cause the said property to be thoroughly examined in reference to water power and hydraulic privileges, and such points as may be designated for such purposes they shall cause to be laid out in reference thereto, and give account thereof to the parties to these presents, as hereinafter provided.

4th. And the said trustees are hereby authorized to sell and convey, from time to time, as they may find opportunity, any part of the lands so purchased, on such terms as to payment, and to take such securities for the purchase-money, or any part thereof, as they shall think fit.

5th. And the trustees, or a majority of them, are also authorized to make all contracts, and do all lawful things and acts that may be necessary or proper, to carry into effect the objects of this agreement, and to promote the interests of the parties concerned, in respect to the property purchased, and every part thereof.

6th. To employ, substitute, and authorize, such attorney or attorneys, agents, and clerks, as may necessary in executing the objects of this agreement, and in the care and management of the said property, and to allow them such compensation for their services as they may think fit; and in the event of the death of any of the said trustees occurring before the trusts hereby created are perfected as herein provided, it is hereby mutually agreed that the surviving trustees shall designate some other person to supply the
34. place of such decedent, and the person so designated shall take the place of such decedent, and execute faithfully all the duties hereby created, in the same manner as such decedent, if living, might, could, and ought to have done.

Fourthly. It is hereby mutually agreed, by and between the parties hereto, that the purchase-money, and the costs of improvements, taxes, and assessments, which have been paid, or which at any time hereafter shall be paid by the said trustees or any of them, or by any of the parties hereto, or by any other person interested in the avails of the said property, are to be charged upon the said property, and repaid out of the first proceeds thereof, and the proceeds of said property already purchased, or hereafter to be purchased

under this agreement, and the proceeds of improvements made and to be made thereon, or on any part thereof, with all the rents, income, and avails thereof, howsoever arising or accruing, after paying all of the expenses, charges, and disbursements, for such improvements, taxes, and assessments, care and management, shall be first applied to the repayment of the said purchase-money, by whomsoever paid or advanced, with interest thereon, and to the extinguishment of any sum which shall remain due and unpaid to any person or persons on account thereof, which payment shall first be made to the persons who have paid most on the shares they are by this agreement bound to pay for, till the balance of such payments shall be reduced to the same on each share, and then pro rata upon all the shares till the whole cost is repaid, so that the said premises and every part thereof may be free, clear, and unincumbered.

Fifthly. And it is mutually agreed that the said trustees shall and will, in good faith, to the best of their ability, so manage
35. and dispose of the said property, and of every part thereof, as to promote the interest and advantage of all persons having a right to share in the avails and proceeds thereof; and that they shall and will, after paying all just and proper expenses for taxes, assessments, surveys, agencies, counsel fees, and improvements, as aforesaid, growing out of the proper care and management of the said property and every part thereof, faithfully, at all times, and particularly on the first Monday of July in each and every year hereafter, account for and pay to the parties hereto, and each of them, his or their assigns or personal representatives, the portion of the avails and proceeds of the said property, which he or they may be entitled to by virtue hereof; and the said trustees shall keep a regular book of account or accounts, in which shall be entered all their purchases, sales, and proceedings, in respect to said property and every part thereof, which book shall at all times be open to the inspection of any of the parties interested in the said premises; and they shall, semi-annually, on the first days of January and July in each and every year, render an account of their doings to each of the parties interested, if required.

Sixthly. And it is mutually covenanted and agreed also, that whenever the trustees shall have received or realized money enough from the sale and other disposition of the property, to pay up and satisfy the whole amount of the purchase-money, and improvements and interests thereon, over and above the taxes, assessments and expenses of management, the power of the said trustees to sell said property shall cease, determine and be at an end. And they shall forthwith thereafter, and with as little delay as the nature of
36. the business will admit, proceed to make partition of said premises, and to lay off and divide the same in manner following, that is to say:

They shall first divide the whole of said premises into two classes,

viz.: In the first class shall be embraced such portion of said property as may have been laid off and reserved for the sites of towns and villages and cities, and of hydraulic privileges, and in the second class shall be embraced all the residue of the said property, and they shall thereupon divide each of the said sites of towns, villages, cities, and hydraulic privileges embraced in the first class into forty-eight parts of equal value, quantity and quality relatively considered; and the residue of said premises embraced in the second class shall be divided into forty-eight parts of equal value, quantity and quality relatively considered; and the property thus divided and apportioned shall be distributed among the parties and persons interested in the proportions hereinafter stated; which distribution shall be made by the said trustees for the time being by lot, so as to secure to each his just share in each class as above specified; and sixty days' notice shall be given by the said trustees to each of the parties interested, of the time and place of such distribution; and upon such division they shall forthwith, by good and sufficient deed or deeds, release and convey in fee to the several persons and parties interested, their heirs and assigns, forever, all the said residue of the said property, in the shares and proportions following, that is to say: The said Joshua Aikin and George P. Ship-

37. man, jointly, nineteen forty-eighth parts; to the said George P. Shipman, in his own right, two forty-eighth parts; to the said Isaac Galland eight forty-eighth parts; to the said Edward C. Delavan, four forty-eighth parts; to the said Samuel Marsh, two forty-eighth parts; to the said Benjamin F. Lee, three forty-eighth parts; to the said William E. Lee, six forty-eighth parts; to the said Erastus Corning, two forty-eighth parts; to the said Henry Seymour, two forty-eighth parts; and the trustees shall also at the same time divide among the said parties in the same proportion all the money, securities for and evidences of debt which they may have on hand accruing from the said property, or any part thereof.

Seventhly. It is understood that the said Aikins and Little shall not directly or indirectly, during the continuance of these presents, make any purchase of lands in said district of country on any other account, except by the consent of the trustees for the time being, until after the said fund of seventy-five thousand dollars shall have been fully invested by them, and if after that they shall make any purchase of the said lands, the parties hereto shall have the refusal thereof at cost, on the terms and in the proportions herein expressed.

Eighthly. The said trustees shall give to each one of the parties interested a certificate, under the hands and seals of at least two of them, one of whom shall be the president or chairman of the board of trustees, stating the interest, which, by virtue of these presents, he is entitled to in the premises; and it is expressly agreed, that if any assignment be made of any interest hereby created, the same

shall be made on the said certificate, which shall thereupon
38. be surrendered to the trustees at their office in the city of New York, and a new certificate or certificates shall thereupon be issued therefor to the proprietor or proprietors; and no sale or transfer of any interest herein shall be obligatory upon, or operate as, a notice to the said trustees of such assignment or transfer, unless the above conditions be complied with; and the said parties who are designated and appointed trustees for the objects and purposes herein expressed, do, by the execution of these presents, declare their assent to the said trusts hereby created.

In testimony of their assents, whereunto the said parties have hereunto set their hands and seals, the day and year first above written.

In presence of

Which said answer and schedule were indorsed as follows, to wit: Filed 8th May, A.D. 1841. O. S. X. Peck, clerk.

Afterwards, to wit, on the day and year aforesaid, the following proceedings were had, to wit:

Decree of Partition.

Partition.

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al.

In this case the said defendants having appeared by their counsel respectively, and filed their answers to the petition, and stated and produced their respective claims and exhibited their proofs of title, and in some cases the original conveyances, and in others authentic copies of conveyances by which the same are held, and their
39. said respective claims and those of the petitioners by their counsel respectfully being by consent submitted to the court for adjudication and partition according to law. And the court being satisfied by sufficient proof that the publications required by the act, entitled An act to provide for the partition of real property, have been duly made, and no other person known or unknown, having appeared and answered the said petition, or produced or made any objections to said partition, and the said claims of said parties now before the court, petitioners and defendants, and their respective proofs and conveyances being by the court heard and considered, it is thereupon, by the consideration of the court, and with the consent of said parties, this 8th day of May, 1841, ordered and adjudged, that the claims and rights of the said parties respectfully to the undivided portions of the land mentioned and described in the said petition,

amounting in the whole to the number of one hundred and one equal portions.

That of these defendants, Marsh, Lee, and Delavan, trustees for the claimants under the articles of association dated 22d October, 1836, filed in this case, and as trustees for the parties interested under said articles, are entitled to forty-one shares and five-eighths of a share.

The defendant John Wright is entitled to one-fourth of a share, the defendant Cyrus Peck is entitled to one-eighth of a share, the defendants Samuel Abbott and Abraham Wendall to one-half share, the defendant William Phelps to two shares, the defendant Ebenezer D. Ayres to one-half share, the defendant William Gillis is entitled to one share, the defendant Henry McKee is entitled to one share, the defendant Wilson Overall is entitled to one share, the defendant Garret V. Denniston is entitled to one-half share, the de-
40. fendant James L. Schoolcraft is entitled to one-half share, the defendant Elizabeth Hunt is entitled to one share, the defendant Rosella O. Gleim is entitled to one share, the defendant Mary L. Murdock is entitled to one share, the defendant Elisa O. Perkins is entitled to one share, the defendant James L. Burtis is entitled to one share, the defendant Margaret Farrar is entitled to two shares, the defendant James Muir (H. T. Reid, his guardian) is entitled to one share, the defendant Thomas Connelly is entitled to one share, the defendant John C. Ward is entitled to one share, the defendants Abijah Fisher, D. W. Kilbourne, and Henry S. Austin are entitled to one share, the defendant D. W. Kilbourne and Henry S. Austin are entitled to one share, the defendant Edward Kilbourne is entitled to one-half share, the defendant John Bertram is entitled to one-half share, the defendant Edwin Manning is entitled to one-quarter of a share, the defendants Edwin Manning and Sheldon Norton are entitled to one-half share, the defendants Wright, McDaniel, and Darrah are entitled to one share and three-fourths, the defendants Manning and Herron are entitled to one share, the defendant Augustus Gonville is entitled to one share, the defendant Benjamin Franklin Messenger is entitled to one share, the defendants the heirs at law of Nathaniel Knapp are entitled to two shares and seven-eighths of a share, the defendant Henry Brouse is entitled to one-eighth of a share, the defendants William, John, and Dalzell Smith are entitled to two shares and one-half of a share, the
41. defendant William H. Smith is entitled to two shares, the defendant John H. Lines is entitled to one share, the defendant William Price is entitled to one share, the defendant Charles Thompson is entitled to one share, and one equal share or undivided part is hereby reserved undivided among the other claimants for the defendant Euphrosine Antaya, in case she should hereafter appear and prove the same, and that the said petitioners are respectively entitled to the following shares and portions, to wit: Josiah Spald-

ing is entitled to one share and three-eighths of a share, Archibald Gamble is entitled to one share and one-eighth of a share, Patrick Walsh is entitled to one full share, Etienne Provost is entitled to one-half of a share, John and Edward Walsh are entitled to two full shares and seventeen one hundred and twentieth parts of a share, heirs of Henry K. Ortley to two-fifths of a share, Green Erskine is entitled to one full share and nineteen twenty-fourths of a full share, Joseph Ridgway, trustee of George Patch, one-third of a full share, Herman C. Cole is entitled to one-fourth part of a full share, Stephen Gore is entitled to one-eighth part of a full share, John B. Sarpy is entitled to one-third of a full share, Edmund H. McCabe is entitled to one-third of a full share, Hugh Tumilty is entitled to one full share, James R. McDonald is entitled to one full share, Josiah W. Walsh is entitled to one full share, John O. Rourke is entitled to one-half of a full share, Antoine Garcia and Margaret, his wife, one-half share, Angelique La Guthrie, now Mattabon, is entitled to one-half of a full share, Michael Tesson is entitled to one full share, heirs of Otis Reynold eleven twenty-fourths of a full share, heirs of James A. H. Palmer one-third of a full share, George H. Crossman five-sixths of a full share, Antoine Le Claire is entitled to seven full shares; all of which said shares and portions of said parties, petitioners and defendants respectively, are hereby by this court and the authority thereof adjudged and decreed to be confirmed, and their said shares and interests are hereby respectively confirmed accordingly. And it is hereby further ordered and decreed that partition be made according to the act aforesaid of the lands mentioned and described in the said petition equally and fairly and impartially among the said parties, petitioners and defendants, according to said act, and that the said partition be made according to the part of the reservation of the Sac and Fox half-breeds, filed and agreed upon by the said parties in this case (marked B.), and that all other persons whatever shall be hereafter barred and concluded from any title or claim in said lands. And this court doth further appoint, as commissioners to make the said partition herein decreed, Samuel B. Ayres, Harmon Booth, and Joseph Webster, with full power and authority to make the said partition into one hundred and one shares of equal value, and report the same to this court, and to do all other acts in relation thereto authorized and required by the aforesaid act, and to make return of said partition, of said shares, and of their proceedings, as required by said act, to this court for confirmation, and such other and further proceedings as to the court shall seem right and according to law.

It is further ordered and decreed, that no partition shall be made under this decree, of the land included in the patent to
43. Thomas F. Reddick, described as follows, to wit: beginning on the right and southwesterly lands of the Mississippi (the most northern corner of the survey, at a stone sixteen inches wide,

eighteen inches long, and two inches thick, from which an elm twenty-five inches in diameter, bears south twenty-seven degrees and fifteen minutes east, distant two hundred and twenty-seven links, and an elm twenty-five inches in diameter, bears south seventy-nine degrees and thirty minutes east, distant three hundred and thirty-six links, thence south thirty-four degrees west, being the northwestern boundary line of this survey, at four chains and forty-one links, the line between sections three and ten (twenty-four chains), and thirty-one links east of the quarter section corner), at fourteen chains and fifty-nine links, leaves the inundated land and water, at seventeen chains and fifty links, a road bears nearly east and west leading from the barracks lying within this survey to Fort Madison; from this point to the old Pawnee village bears north sixty degrees west about three hundred yards, afterwards inhabited by the Sac Indians, about the year 1803; the Sac Indians also inhabited the place now occupied by the barracks, on the east side of the creek, which is south sixty at twenty-nine chains and twenty links, a branch, thirty links wide, runs south at forty-four chains, leaves the brush and scattering timber, and enters smooth prairie, bearing east and west, at sixty-six chains and fifty links; an old Indian trace bears south sixty degrees west, and north sixty degrees east, eighty-eight chains and fifty links, to a post; the most western corner of this survey, in a mound in which are deposited three stones, edges downwards, one of
44. which is eight inches square, and two inches thick, and the two others about four inches square, and two inches thick; thence south fifty-four degrees, and fifteen minutes east, being the southwestern boundary line of this survey, at seventeen chains and twenty-three links, intersects the line between sections ten and fifteen (thirty-two chains and sixty links east of the corner of nine, ten, fifteen and sixteen, at a post five inches in diameter, in a mound five feet square at the bottom, and two feet at the top, under which mound are deposited three small stones, each about four inches square, and one of them three inches, and the other two two inches thick; at thirty-one chains and fifty links, a path bears north and south, leading from St. Francisville to the aforesaid barracks, at the head of the rapids of the Mississippi. At thirty-nine chains a narrow valley runs along the foot of the bluff. At fifty-three chains and fifty links leaves level prairie and enters the foot of the bluff at sixty chains and fifty links; the top of the bluff at seventy-six chains and thirty-three links intersects the line between sections fourteen and fifteen, five (chains and twenty-eight links north of the quarter section corner on said line, at *at* post five inches in diameter, two feet in the ground from which an elm (old marked) ten inches in diameter, bears south fifty-two degrees east, distant one hundred and sixty links; and a bur oak, forked near the ground, thirty inches in diameter, bears south thirteen degrees east, distant two hundred and eleven links, eighty chains, to a post, eight inches in diameter (the most

southern corner of this survey), two feet in the ground, from which a burr oak (marked S. 14, T. 66, R. 5 W.)

45. twenty-five inches in diameter, bears north eighty-one degrees east, distant seventy-eight links; and an elm twenty-five inches in diameter (marked with a notch and a blaze, bears north sixty-four degrees and thirty minutes west, distant one hundred and fifteen links. Thence north thirty-four degrees east, being the southeastern boundary line of the survey, at twenty-five chains and ninety-seven links, a black oak, twenty-four inches in diameter, leaves the prairie and enters scattering timber, bearing east and west; at thirty-five chains and forty-four links, a black oak, twenty-five inches in diameter; at forty-four chains and fourteen links, intersects the line between sections eleven and fourteen, fifty-two chains and eighty-three links west of the corner to section eleven, twelve, thirteen, and fourteen. At a post five inches in diameter, from which an elm twelve inches in diameter bears south eighty-three degrees and thirty minutes east, distant forty-one links, and an elm ten inches in diameter, bears north fifty-five degrees east, distant sixty-eight links; at sixty-two chains and seventy-eight links, a spring branch runs westwardly; at seventy-nine chains and seventy-eight links, the top of the bluff bears east and west; at eighty-five chains and seventy-eight links, the foot of the bluff bears east and west, eighty-eight chains and fifty links, to a stone thirty inches long, sixteen inches wide, and eight inches thick, three inches in the ground, the edge in the direction of the line, being the most eastern corner of this survey on the right and southerly bank of the Mississippi; from which stone an elm, ten inches in diameter, marked P. S., bears north fifty-eight degrees west, three chains and fifty links. Thence north sixty-nine degrees, west five chains and thirty links, to a branch twenty links wide, runs from the southwest; thence north eighty-five degrees west, at five chains and eighty links, the

46. right bank of a slough, thence north sixty-five degrees west, at three chains and eighty-seven links, the left bank of the mouth of the slough, into which a small branch flows from the south nine chains and seventy-four links, leaves timber extending southward; thence north fifty-six degrees west, at seven chains the garrison, the corner of which is south seventy degrees west, eleven chains, nearly opposite the centre of the garrison; thence north thirty degrees west, sixteen chains and fifty links, at seven chains and twenty-five links, a stable, one hundred links to the left, which was formerly used by the soldiers of this station; thence north fifty-three degrees west, six chains and fifty links, to the south side of a slough or overflowed land, at the mouth of a creek; thence north twelve degrees west, crossing the creek, eleven chains and eight links, to the place of beginning, being in township sixty-six north, of range five west, of the fifth principal meridian, and being designated on the connected plat, as survey numbered three thousand and ninety-five, until the

further order of this court, without the consent of the heirs of said Reddick.

Afterwards, to wit, on the 31st day of May, A. D. 1841, the following proceedings were had, to wit:

Affidavit of Joseph Webster.

Territory of Iowa, Lee County, *ss.*

Joseph Webster, one of the commissioners appointed by the decree of the District Court for said county, dated May 8th, 1841, for the purpose of making partition of the lands in said decree mentioned, according to said decree, being duly sworn, upon his oath, deposes and says, that he will honestly and impartially execute the trust reposed in him, under said decree.

JOSEPH WEBSTER.

47. Sworn and subscribed before me, this 31st day of May, A. D. 1841.

O. S. X. PECK,
Clerk District Court.

Indorsed as follows, to wit: "Filed 31st May, 1841. O. S. X. Peck, clerk."

Affidavit of Samuel B. Ayres.

Territory of Iowa, Lee County, *ss.*

Samuel B. Ayres, one of the commissioners appointed by the decree of the District Court for said county, dated May 8th, A. D. 1841, for the purpose of making partition of the lands in said decree mentioned, according to said decree, being duly sworn, deposes and says, upon his oath, that he will honestly and impartially execute the trust reposed in him, under said decree.

Subscribed and sworn to before me, this 31st day of May, A. D. 1841.

O. S. X. PECK,
Clerk District Court.

Indorsed: "Filed May 31st. O. S. X. Peck, clerk."

Affidavit of Harmon Booth.

Territory of Iowa, Lee County, *ss.*

Harmon Booth, one of the commissioners appointed by a decree of the District Court for said county, dated May 8th, 1841, for the purpose of making partition of the lands in said decree mentioned, according to said decree, being duly sworn, deposes and says, upon

his oath, that he will honestly and impartially execute the trust reposed in him, under said decree.

HARMON BOOTH.

Sworn to and subscribed before me, this 31st day of May, 1841.

O. S. X. PECK,
Clerk D. C.

Indorsed: Filed May 31st, 1841. O. S. X. Peck, clerk.

Hawk-Eye Publication.

Territory of Iowa, Lee County, *ss.*

District Court for said county. April Term, 1840.

48. JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al.

Petition for Partition.

Notice is hereby given that a petition was filed on the 14th day of April, A. D. 1840, in the District Court of Lee County, aforesaid, by Josiah Spalding, Archibald Gamble, Patrick Walsh, Etienne Provost, John and Edward Walsh, H. K. Ortley, Green Erskine, Joseph Ridgway, assignee of George Patch, Herman C. Cole, Stephen Gore, John B. Sarpy, Edward H. McCabe, Hugh Tumilty, James R. McDonald, Joseph W. Walsh, John O. Rourke, Antoine Garcia and Margaret, his wife, Angelique Mattabon, formerly La Guthrie, Michael Tesson, heirs and legal representatives of Otis Reynolds, deceased, heirs and legal representatives of J. A. H. Palmer, deceased, George H. Crossman, and Antoine Le Claire, as petitioners, and against Euphrosine Antaya, Elizabeth Hunt, Elise O. Perkins, late Gildersleve, formerly Johnson, Mary Murdock, formerly Johnson, Rosella O. Gleim, formerly Johnson, James Muir, Thomas Connelly, and Betsey Farrar, as defendants, and is now pending, wherein the said petitioners pray that a partition be made of the following real estate, to wit: All that tract of land, commonly called the Half-Breed Tract, situated in Lee county, aforesaid, lying between the Mississippi and Des Moines rivers, bounded on the north by a line drawn from the northwest corner of the State of Missouri, east to the Mississippi river, and containing one hundred and nineteen thousand acres, more or less; and they, the said defendants, and all other persons interested in the property herein described, are hereby required to appear, and answer to the said petition, on or before the next term
49. of the District Court of Lee County, aforesaid, to be begun and holden on the first Monday of October next, or the pro-

ceedings had in the cause thereafter will be binding and conclusive on them forever.

JOHN H. LINES,
Clerk D. C.
REID & JOHNSTON,
Attorneys for Plaintiffs.

Affidavit of Publisher.

Territory of Iowa, Des Moines County, *ss.*

I, James G. Edwards, editor and publisher of the Hawk Eye and Iowa Patriot, a public newspaper, printed in Burlington, in said Territory, do hereby certify, that the notice which is hereto annexed was published in the said Hawk Eye and Patriot for twelve weeks, successively, and that the first publication thereof was made on the 2d day of July, A. D. 1840.

JAMES G. EDWARDS,
Ed. and Pub. Hawk Eye.

Sworn to and subscribed before me, this 28th day of September, A. D. 1841.

JOHN S. DUNLAP,
Clerk District Court, Des Moines County.

Afterwards, to wit, at the October term of the District Court for said county, the following proceedings were had, to wit:

Decree of Court. Presentation of Commissioners' Report.

Territory of Iowa, Lee County, *ss.*

At a District Court of the first judicial district of said Territory, begun and holden at the court-house in Fort Madison, in said county, on the sixth day of October, A. D. 1841.

Present the Honorable Charles Mason, judge, Josiah Spalding and others, Euphrosine Antaya and others.

Samuel B. Ayres, Harman Booth, and Joseph Webster, the commissioners appointed by the decree made in this cause, on the eighth day of May, A. D. 1841, to make partition in the manner specified in said decree, having this day presented their report, bearing date, at Fort Madison, on the fourth day of October, 1841, whereby
50. it appears that they have executed the duties of their appointment, and have divided the land in the proceedings in this cause into one hundred and one equal shares, excepting certain islands in the river Des Moines and Mississippi, which are so situated that partition thereof cannot be made without great prejudice to the owners thereof, and have recommended that a sale of said islands be made, and on hearing William Sillaman and Hugh T. Reid, of

counsel for the parties in this cause, and Orville H. Browning and Milton D. Browning, of counsel for certain persons not parties to this suit, and by consent of all the parties to this suit, and of their counsel, it is ordered, adjudged, and decreed, and the court, by virtue of the power and authority therein vested, doth order, adjudge, and decree, that the said report, and all and singular the matters and things therein contained, be, and the same hereby are, ratified and confirmed; and it is further ordered, adjudged, and decreed, that the clerk of this court shall make the allotment of those shares, pursuant to the statute in such cases made and provided, and that in making such allotments the said clerk unite the fractions of shares mentioned in said report in such manner as he may deem expedient, so that persons owning fractions of shares may together draw entire shares, to be held by them in common, in proportion to their respective fractional parts; and it is further ordered, adjudged, and decreed, that the partition made by said report, and which is to be perfected by the allotment of those shares, be firm and effectual forever; and it is further ordered, adjudged, and decreed, that the said commissioners sell, at public auction, to the highest bidder, all the islands situated in the Des Moines and Mississippi river, in their said report mentioned,
51. except the island called the "Cut-off," situated in the river Des Moines, within the jurisdiction of the State of Missouri; and that commissioners give notice of the time and place of said sale, for the time and in the manner prescribed by law in respect to sales of land by sheriff upon executions; that the said commissioners sell said islands on a credit of one year, as to two-thirds of the purchase-money, to be secured by the negotiable promissory notes of the purchasers, and their mortgages of the property, to be purchased by them respectively, and as to the remaining one-third of the purchase-money, that the same be paid in cash at the time of sale, and in default of the payment before-mentioned the property be forthwith resold by the said commissioners, without further notice, and that before proceeding to make such sale, as aforesaid, the said commissioners give security, pursuant to the statute in such cases made and provided; and it is further ordered, adjudged, and decreed, that the clerk of this court ascertain and report whether there be any general incumbrance by mortgage, judgment, decree, or otherwise, upon any portion of the islands so directed to be sold, as aforesaid. And it is further ordered, adjudged, and decreed, that after completing such sale, the said commissioners shall report their proceedings to this court, with a description of the different parcels of land sold to each purchaser, and the price paid by him. And it is further ordered, adjudged, and decreed, that all the cost and expenses of the proceedings in this cause, including the sum of nine hundred and sixty-six ($966) dollars, for the costs and expenses of said commissioners, as specified by said report, be paid in the first place by the petitioners, and that the other parties reimburse to the

said petitioners the respective proportions of the said parties
52. of this suit, costs and expenses, in the ratio of their respective interests, within sixty days after the date of this decree, and that the said costs and expenses be deemed a lien on such interests until the same shall be paid, and that execution issue on behalf of the petitioners against such of the said defendants as shall omit to pay their respective proportions of said costs and expenses until the expiration of the said sixty days, for their said respective proportion of said costs and expenses, and the expenses of collecting the same; and it appearing that by some inadvertence and mistake the aggregate amount of the shares and fractions of shares, in said decree mentioned, is equal to one hundred and two shares and one-third of shares, that the number of shares provided for by the decree and report aforesaid is one hundred and one shares, only leaving one share and one-third of a share unprovided for, it is, by the consent of all parties, their attorneys and counsel, further ordered, that the said mistake be corrected by deducting from the portion awarded to the defendants, Lee, Marshal, and Delavan, trustees, &c., the fractional part of five-eighths of one share, leaving the said trustees the number of forty-one full shares only; and by deducting the portion awarded to the defendant Antoine Le Claire, five-eighths of one share, leaving to said Le Claire six shares and three-eighths of one share only; and by deducting from the portion awarded to the defendant Green Erskine, one-twelfth part of one share, leaving to said Erskine one share and seventeen twenty-fourths of one share only; which said report of said commissioners is in words and figures following, to wit:

53. *Report of Commissioners.*

Territory of Iowa, County of Lee, *ss.*

At a District Court of the first judicial district of said Territory, begun and holden at the court-house in Fort Madison, in said county, on the fourth Monday, to wit, on the twenty-sixth day of April, A. D. 1841, present honorable Charles Mason, judge, among other, were the following proceedings, to wit:

Copy of Decree of Partition.

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al. } Partition.

In this case the said defendants having appeared by their counsel respectively, and filed their answer to the petition, and stated and produced their respective claims, and exhibited their proofs of title,

and in some cases the original conveyances, in others authentic copies of conveyances by which the same are held, and their said respective claims and those of the petitioner, by their counsel respectively, being by counsel submitted to the court for adjudication and partition according to law, and the court being satisfied by sufficient proof that the publications required by the act, entitled An act for the partition of real property, have been duly made, and no other persons, known or unknown, having appeared and answered the said petition, or produced or made any claim, or any objection to said partition, and the said claims of the said parties now before the court, petitioners and defendants, and their respective proofs and conveyances being by the court heard and considered, it is thereupon, by the consideration of the court, and with the consent of said parties, this eighth (8) day of May, A.D. 1841, ordered and adjudged, that the claims and rights of the said parties respectively to the undivided portions of land mentioned and described in said petition, amounts in the whole to the number of one hundred and one
54. equal portions. That of these the defendants Marsh, Lee, and Delavan, trustees for the claimants under the articles of association, dated October 22d, 1836, filed in this case, and as trustees for the persons interested under said articles, are entitled to forty-one shares and five-eighths of a share. The defendant John Wright is entitled to one-fourth of a share; the defendant Cyrus Peck is entitled to one-eighth of a share; the defendants Samuel Abbott and Abraham Wendall are entitled to one-half share; the defendant William Phelps is entitled to two shares; the defendant Ebenezer D. Ayres is entitled to one-half share; the defendant William Gillis is entitled to one share; the defendant William McKee is entitled to one share; the defendant Wilson Overall is entitled to one share; the defendant Garrett V. Denniston is entitled to one share; the defendant James L. Schoolcraft is entitled to one-half share; the defendant Elizabeth Hunt is entitled to one full share; the defendant Rosella O. Gleim is entitled to one full share; the defendant Mary L. Murdock is entitled to one full share; the defendant Elisa O. Perkins is entitled to one full share; the defendant James L. Burtis is entitled to one full share; the defendant Margaret Farrar is entitled to two full shares; the defendant James Muir (H. T. Reid, guardian) is entitled to one full share; the defendant Thomas Connelly is entitled to one share; the defendant John C. Ward is entitled to one-half share; the defendants Abijah Fisher, D. W. Kilbourne, and Henry S. Austin, are entitled to one share; the defendants D. W. Kilbourne and Henry S. Austin are entitled to one share; the defendant Edward Kilbourne is entitled
55. to one-half share; the defendant John Bertram is entitled to one-half share; the defendant Edward Manning is entitled to one-quarter of a share; the defendants James Manning and Sheldon Norton are entitled to one-half share; the defendants Wright,

McDaniel, and Darrah, are entitled to one share and three-fourths of a share; the defendant Manning and Hearn are entitled to one share; the defendant Augustus Gonville is entitled to one share; the defendant Benjamin Franklin Messenger is entitled to one share; the defendants, the heirs at law of Nathaniel Knapp, deceased, are entitled to two shares and seven-eighths of a share; the defendant Henry Brown is entitled to one-eighth of a share; the defendants William John and Dalsiell Smith are entitled to two shares and one-half share; the defendant William H. Smith is entitled to two shares; the defendant John H. Lines is entitled to one share; the defendant William Price to one share; the defendant Charles Thomson is entitled to one share; and one equal share or undivided part is hereby reserved, undivided among the other claimants, for the defendant Euphrosine Antaya, in case she should hereafter appear and prove the same. And that the said petitioners are respectively entitled to the following shares and portions, to wit: Josiah Spalding is entitled to one share and three-eighths of a share; Archibald Gamble is entitled to one share and one-eighth of a share; Patrick Walsh is entitled to one full share; Etienne Provost is entitled to one-half a share; John and Edward Walsh are entitled to two shares and seventeen one hundred and twentieth parts of a share; heirs of Henry K. Ortley are entitled to two-fifths of a share; Green Erskine is entitled to one full share and nineteen twenty-fourths of a share; Joseph Ridgway, trustee of George Patch, is entitled to one-third of a share; Hermon C. Cole is entitled to one-fourth of a full
56. share; Stephen Gore is entitled to one-eighth part of a full share; John B. Sarpy is entitled to one-third of a full share; Edmund H. McCabe is entitled to one third of a full share; Hugh Tumilty is entitled to one full share; James R. McDonald is entitled to one full share; John O. Rourke is entitled to one-half a full share; Joseph W. Walsh is entitled to one full share; Antoine Garcia and Margaret, his wife, are entitled to one-half share; Angelique La Guthrie, now Mattabon, is entitled to one-half share; Michael Tesson is entitled to one full share; heirs of Otis Reynolds are entitled to eleven twenty-fourths of a share; heirs of James A. H. Palmer are entitled to one-third of a share; George H. Crossman is entitled to five-sixths of a full share; Antoine Le Claire is entitled to seven full shares.

All which said shares and portions of said parties, petitioners and defendants, respectively, are hereby by this court thereof adjudged and decreed to be confirmed, and their said shares and interests are hereby respectively confirmed accordingly. And it is hereby further ordered and decreed, that partition be made accordingly to the act aforesaid, of the lands mentioned and described in said petition, equally and fairly and impartially, among the said parties, petitioners and defendants, according to said act; and that the said partition be made according to the plats of the reservation of the Sac and Fox half-breeds, filed and agreed upon

by the said parties in this case (marked B.), and that all other persons whatever shall be hereafter barred and concluded from any title or claim in said lands. And this court doth further appoint as commissioners to make the partition herein decreed, Samuel B. Ayers,
Harman Booth, and Joseph Webster, with full power and
57. authority to make the said partition into one hundred and one equal shares of equal value, and report the same to this court, and to do all other acts in relation thereto, authorized and required by the aforesaid act, and to make return of said partition of said shares, and of their proceedings, as required by said act, to this court for confirmation, and such other and further proceedings as the court shall seem right and according to law.

It is further ordered and decreed, that no partition shall be made under this decree of the lands included in the patent to Thomas F. Reddick, described as follows, to wit: Beginning on the right and southwest bank of the Mississippi (the most northern corner of this survey, at a stone sixteen inches wide, eighteen inches long, and two inches thick, from which an elm twenty-five inches in diameter bears south twenty-seven degrees and fifteen minutes east, distant two hundred and thirty-seven links, and an elm twenty-five inches in diameter bears south seventy-nine degrees and thirty minutes east, distant three hundred and thirty-six links, thence south thirty-four degrees west, being the northwestern boundary line of this survey, at four chains and forty-one links, the line between sections three and ten, twenty-four chains and thirty-one links east of the quarter section corner, and fourteen chains and fifteen links leaves the inundated land and water, at seventeen chains and fifty links a road bears nearly east and west, leading from the barracks lying within this survey to Fort Madison; from this point the old Pawnee village bears north sixty degrees west about three hundred yards, afterwards inhabited by the Sac Indians, about the year eighteen hundred and three; the Sac Indians also inhabited the place now occupied by the barracks on the east side of the creek, which is south sixty degrees east of the point, about three hundred yards distant; at twenty-nine chains and twenty links a branch thirty links wide runs south; at forty-four chains leaves the brush and scattering timber and enters smooth
prairie, bearing east and west; at sixty-six chains and fifty
58. links an old Indian trail bears south sixty degrees west and north sixty degrees east, eighty-eight chains and fifty links, to a post, the most western corner of this survey, in a mound in which are deposited three stones, edges downwards, one of which is eight inches square and two inches thick, and two others about four inches thick; thence south fifty-four degrees fifteen minutes east, being the southwestern boundary line of this survey, at seventeen chains and twenty-three links, intersects the line between ten and fifteen, thirty-two chains and sixty links east of the corner of sections nine, ten, fifteen, and sixteen, at a post five inches in diameter, in a mound five

feet square at the bottom and two feet at top, under which mound are deposited three small stones, each about four inches square, one of them three inches, and the other two two inches thick; at thirty-one chains and fifty links a path bears north and south, leading from St. Francisville to the aforesaid barracks, at the head of the rapids of the Mississippi; at thirty-nine chains a narrow valley runs along the foot of the bluff; at fifty-three chains and fifty links leaves level prairie and enters the foot of the bluff; at sixty chains and fifty links the top of the bluff; at seventy-six chains and twenty-three links intersects the line between sections fourteen and fifteen, five chains and twenty-eight links north of the quarter section on said line, at a post five inches in diameter, two feet in the ground, from which an elm (old mark) ten inches in diameter, bears south fifty-two degrees east, distant one hundred and sixty links, and a burr oak, forked near the ground, thirty inches in diameter, bears south thirteen degrees east, distant two hundred and eleven links eighty chains, to a post eight inches in diameter (the most southern
59. corner of this survey), two feet in the ground, from which a burr oak (marked S. 14, T. 66, R. 5 W.) twenty-five inches in diameter, bears north eighty-one degrees east, distant seventy-eight links, and an elm twenty-five inches in diameter (marked with a notch and blaze), bears north sixty-four degrees and thirty minutes west, distant one hundred and fifteen links; thence north forty-four degrees east, being the southeastern boundary line of this survey, at twenty-five chains and ninety-seven links a black oak, twenty-four inches in diameter, leaves the prairie and enters scattering timber, bearing east and west; at thirty-five chains and forty-one links a black oak, twenty-five inches in diameter; at forty-four chains and fourteen links intersects the line between sections eleven and fourteen, fifty-two chains and eighty-three links west of the corner to sections eleven, twelve, thirteen, and fourteen, at a post, five inches in diameter, from which an elm, twelve inches in diameter, bears south eighty-three degrees thirty minutes east distant forty links, and an elm ten inches in diameter, bears north fifty-five degrees east distant sixty-eight links; at sixty-two chains and seventy-eight links the top of the bluff, bears east and west eighty-eight chains and fifty links, to a stone thirty inches long, sixteen inches wide, and eight inches thick, three inches in the ground, the edge in the direction of the line, being the most eastern corner of this survey, on the right and southerly bank of the Mississippi, from which stone an elm, ten inches in diameter, marked J. S., bears north fifty-eight degrees west, three chains and fifty links; thence north sixty-nine degrees west five chains and twenty links, a branch twenty links wide runs from the southwest; thence north eighty-five degrees west, at five chains and eighty links, a slough; thence north sixty-five degrees west, at three chains and eighty-seven links the left bank of the mouth of the slough, into which a small stream flows from the south, nine chains

and seventy-four links, leaves the timber extending south-
60. wardly; thence north fifty-six degrees west at seven chains the garrison, the course of which is south seventy degrees west, eleven chains, nearly opposite the centre the garrison; thence north thirty degrees west sixteen chains and fifty links, at seven chains and twenty-five links, a stable, one hundred links to the left, which was formerly used by the soldiers of this station; thence north fifty-three degrees west, six chains and fifty links, to the south side of a slough or overflowed lands at the mouth of a creek; thence north three degrees west, crossing the creek, eleven chains and eight links, to the place of beginning; until the further order of this court, without the consent of the heirs of said Reddick.

Clerk's Certificate.

Territory of Iowa, Lee County, *ss.*

I hereby certify the foregoing to be a true and complete transcript of the record of the decree in the case of Josiah Spalding and others *v.* Euphrosine Antaya and others, for a partition of the half-breed lands, as fully and completely as the same remains of record in my office.

In testimony whereof I hereto set my hand and affix the seal of the District Court for said County, this 2d day of June, A. D. 1841.

O. S. X. PECK,
Clerk.

(Copy.)

Report of Commissioners Continued.

By authority of the foregoing decree, the undersigned commissioners therein named hereby report, that on the twenty-fourth day of May last, they employed the county surveyor of Lee county, and three assistants, with whom they proceeded to examine and class the lands and town lots included in the half-breed Sac and Fox reservation, lying in said county of Lee. That they completed said survey, examination, and classification, on the 15th day of August, and that thereupon they proceeded to make partition of said lands and town lots into one hundred and one shares or portions of equal value, the metes and bounds of which are hereinafter described, as will fully appear by reference to the maps or plats of said tract and town lots accompanying this report, as follows, to wit:

61. *Share No. One.*

Lands.

Contains, in township sixty-six (66) north, range five (5) west, the

east half of southeast quarter section 24, eighty acres (80); and the south half of section twenty-two (22), three hundred and twenty (320) acres. In township sixty-five (65) north, range five (5) west, the south half of fractional section seven (7), three hundred and eighteen 8–100 acres (318 8–100); and the southwest quarter of section eight (8), one hundred and sixty (160) acres. In township sixty-six (66) north, range six (6) west, the southwest quarter of section twenty-eight (28), one hundred and sixty acres (160). In township sixty-five (65) north, range six (6) west, fractional northwest quarter of section three (3), one hundred and thirty-six 38–100 acres (136 38–100); containing in all, 1174 46–100 acres.

Town Lots.

Also in the town of Keokuk, lots four (4), five (5), and six (6), in block fifty-seven (57); lots seven (7), eight (8), and nine (9), in block twenty-four (24); lots one (1), two (2), three (3), and four (4), in block twenty-five (25); lots seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block one hundred (100); and all the lots in block one hundred and one (101).

Also in the town of Nashville, lot No. eighty (80).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street include all the land in front of them to the Mississippi river, except lots Nos. five and six (5 & 6), in block No. fifty-seven (57), which are bounded by the middle of Fulton street, extending to the river.

62. *Share No. Two.*

Lands.

Contains, in township sixty-seven (67) north, range five (5) west, fractional northwest quarter of section ten (10), one hundred and forty-nine 14–100 acres (14 914–100a.); northeast quarter of section twenty-one (21), one hundred and sixty acres (160); southeast quarter of section nineteen (19), one hundred and sixty acres (160); the east half of the southwest quarter of section nineteen (19), eighty (80) acres; the northeast quarter of section thirty (30), one hundred and sixty acres (160); and fractional northwest quarter of section thirty (30), one hundred and fifty-eight 47–100 acres (158 47–100). In township sixty-seven (67) north, range six (6) west, the south half of section twenty-two (22), three hundred and twenty (320) acres; containing in all 1187 61–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. two (2), in block seven (7); lot No. five (5), in block ten (10); lots one (1), two (2), and three (3), in block twenty-eight (28), lots one (1), two (2), three (3), four (4), five (5), and six (6), in block one hundred eighty-four (184); and all the lots in block one hundred and eighty-five (185).

Also in the town of Nashville, lot No. seventeen (17), and lot No. one hundred and forty-seven (147).

Boundaries.

All the town lots included in the above share, are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street include all the land in front of them to Mississippi river.

63. *Share No. Three.*

Lands.

Contains, in township sixty-seven (67) north, range five (5) west, the south half of section twenty (20), three hundred and twenty (320) acres; northwest quarter of section twenty (20), one hundred and sixty acres (160); the west half of the northeast quarter of section twenty (20), eighty (80) acres. In townsbip sixty-seven (67) north, range six (6) west, fractional southwest quarter of section nineteen (19), one hundred and twenty-nine (129) acres; the north half of section twenty-one (21), three hundred and twenty (320) acres; and the northeast quarter of section twenty (20), one hundred and sixty acres (160); containing in all 1169 acres.

Town Lots.

Also in the town of Keokuk, lot number four (4), in block No. seven (7); lot No. seven (7), in block No. ten (10); lots No. seven (7), eight (8), and nine (9), in block No. twenty-eight (28), lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. one hundred and eighty-one (181); and all the lots in block No. one hundred and eighty-two (182).

Also in the town of Nashville, lot No. nineteen (19), and lot No. one hundred and forty-nine (149).

Boundaries.

All the town lots included in the above share, No. 3, are bounded by the middle of the streets and alleys upon which they are situated,

and those upon Water street include all the land in front of them to the Mississippi river.

64. *Share No. Four.*

Lands.

Contains, in township sixty-seven (67) north, range five (5) west, the south half of section twenty-one (21), three hundred and twenty (320) acres; west half of fractional section nine (9), two hundred and eighty-seven 81–100 acres (287 81–100); the west half of the northwest quarter of section twenty-eight (28), eighty (80) acres; and the east half of section eighteen (18), three hundred and twenty acres (320); the southwest quarter of section seventeen (17), one hundred and sixty (160) acres; containing in all 1167 81–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. six (6), in block No. seven (7); lot No. nine (9), in block No. ten (10); lots No. one (1), two (2), and three (3), in block No. twenty-seven (27); lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. one hundred and seventy-eight (178); and all the lots in block No. one hundred and seventy-nine (179).

Also, in the town of Nashville, lot No. twenty-two (22), and lot No. one hundred and fifty-two (152).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and that upon Water street includes all the land in front of it to the Mississippi river, except lot No. six (6), in block No. seven (7), which is bounded by the middle of High street, extending to the river.

65. *Share No. Five.*

Lands.

Contains, in township sixty-seven (67) north, range five (5) west, the fractional northwest quarter of section twenty-four (24), one hundred and fifty-nine 82–100 (159 82–100) acres; fractional southwest quarter of section twenty-four (24), fifty-seven 26–100 (57 26–100) acres; northeast quarter of section twenty-three (23), one hundred and sixty (160) acres; and fractional southeast quarter of section twenty-three (23), one hundred and forty-eight 21-100 (148 21–100) acres. In township sixty-seven (67) north, range six (6) west, the northeast quarter of section seventeen (17), one hun-

dred and sixty (160) acres; fractional southeast quarter of section eight (8), one hundred and sixty-three 86–100 acres (163 86–100); the southwest quarter of section ten (10), one hundred and sixty (160) acres; and the southeast quarter of section twenty-nine (29), one hundred and sixty (160) acres; containing in all 1169 15–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. four, 4, in block No. six, 6; lot No. one, 1, in block No. ten, 10; lots No. one, 1, two, 2, and three, 3, in block No. thirty-seven, 37, lots Nos. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and ninety, 190; and all the lots in block No. one hundred and ninety-one, 191.

Also, in the town of Nashville, lot No. twelve, 12, and lot No. one hundred and twenty-seven, 127, No. one hundred and forty-two, 142.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and that upon Water street includes all the land in front of it to the Mississippi river.

66. *Share No. Six.*

Lands.

Contains, in township sixty-seven, 67, north, range seven, 7, west, fractional southeast quarter of section twenty-nine, 29, one hundred and fifty-seven 39–100, 157 39–100, acres; south half of section twenty-eight, 28, three hundred and twenty, 320, acres; south half of section thirty-five, 35, three hundred and twenty, 320, acres; and the west half of the southwest quarter of section thirty-six (36), eighty acres, 80. In township sixty-six, 66, north, range seven, 7, west, the fractional southwest quarter of section thirteen, 13, one hundred and forty-seven 26–100, 147 26–100 acres; and the southeast quarter of section thirteen, 13, one hundred and sixty, 160, acres; containing in all 1184 65–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. one, 1, and two, 2, in block No. nineteen, 19; lots No. three, 3, and four, 4, in block No. twenty, 20; lots nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. thirty-five, 35; lots No. one, 1, two, 2, and three, 3, in block No. thirty-eight, 38; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block seventy-six, 76; and all the lots in block No. seventy-five, 75.

Also, in the town of Nashville, lot No. one hundred and sixteen, and lot No. two hundred and twelve, 212.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and those upon Water street include all the lands in front of them to the Mississippi river.

67. *Share No. Seven.*

Lands.

Contains, in township sixty-seven, 67, north, range five, 5, west, fractional southwest quarter of section one, 1, twenty-nine 77–100 acres, 29 77–100; fractional southeast quarter of section two, 2, nineteen 16–100 acres, 19 16–100; northwest quarter of section twelve, 12, one hundred and sixty, 160, acres; the northeast quarter of section eleven, 11, one hundred and sixty, 160, acres; in township sixty-seven, 67, north, range six, 6, west, the whole of section twenty-seven, 27, six hundred and forty, 640, acres; and the northwest quarter of section thirty-four, 34, one hundred and sixty, 160, acres; containing in all 1168 93–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. one (1), in block No. (6); lot No. ten (10), in block No. eleven (11); lots No. four (4), five (5), and six (6), in block No. sixty-four (64); lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. one hundred and ninety-six (196); and all the lots in block No. one hundred and ninety-five (195).

Also in the town of Nashville, lot No. nine (9); lot one hundred and twenty-four (124); and lot No. one hundred and thirty-nine (139).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, except lot six, in block one hundred and ninety-six (196); and lots six (6), and seven (7), in block No. one hundred and ninety-five (195); which said three lots include the whole of Fourteenth street opposite to them; and those upon Water street include all the land in front of them, to the Mississippi river.

68. *Share No. Eight.*

Lands.

Contains in township sixty-seven (67) north, range five (5), west; the southeast quarter of section eleven (11), one hundred and sixty (160), acres; the northeast quarter of section fourteen (14), one hundred and sixty (160), acres. In township sixty-seven (67) north, range six (6) west, fractional section seven (7), two hundred and fifty-seven 10–100 acres, 257 10–100; and fractional section eighteen (18), five hundred and seventy-four 78–100 acres (574 78–100); containing in all 1151 88–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. three (3), in block No. six (6); lot No. twelve (12), in block No. eleven (11); lots No. ten (10), eleven (11), and twelve (12), in block No. sixty-four (64); lots seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block No. one hundred and ninety-three (193); and all the lots in block No. one hundred and ninety-two (192).

Also in the town of Nashville, lot No. eleven (11); lot No. one hundred and twenty-six (126); and lot No. one hundred and forty-one (141).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and that upon Water street includes all the land in front of it, to the Mississippi river.

69. *Share No. Nine.*

Lands.

Contains in township sixty-seven (67) north, range four (4) west, the southwest quarter of section seven (7), one hundred and sixty (160) acres; fractional northwest quarter of section eighteen (18), seventy-nine and 24–100 acres (79 24–100). In township sixty-seven north, range six (6) west, the north half of section fifteen (15) three hundred and twenty (320) acres; the east half of section thirteen (13), three hundred and twenty (320) acres; fractional northeast quarter of section ten (10) thirty-nine and 85–100 acres (39 85–100); and the southeast quarter of section ten (10) one hundred and sixty, 160, acres; containing in all 1079 9–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. eleven, 11, in block No. five,

5; lot No. eight, 8, in block No. eleven, 11; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. ninety-four, 94; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and ninety-nine, 199; and all the lots in block No. one hundred and ninety-eight, 198.

Also, in the town of Nashville, lot No. ten, 10; lot No. one hundred and twenty-five, 125; and lot No. one hundred and forty, 140.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, except lot six, 6, in block No. one hundred and ninety-nine, 199; and lot six, 6, and seven, 7, in block No. one hundred and ninety-eight, 198; which said three lots include all of Fourteenth street opposite them; and the lot upon Water street includes all the land in front of it, to the Mississippi river.

70. *Share No. Ten.*

Lands.

Contains in township sixty-seven, 67, north, range five, 5, west, the east half of fractional section ten, 10, three hundred and sixteen and 10–100, 316 10–100 acres; northwest quarter of section twenty-two, 22, one hundred and sixty, 160, acres; and the west half of the southwest quarter of section nineteen, 19, seventy-seven and 92–100, 77 92–100 acres. In township sixty-seven, 67, north, range six, 6, west, the southeast quarter of section twenty-four, 24, one hundred and sixty, 160, acres; the northeast quarter of section twenty-two, 22, one hundred and sixty, 160, acres; and the west half of section twenty-three, 23, three hundred and twenty, 320, acres; containing in all 1194 and 2–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. one, 1, in block No. seven, 7; lot No. four, 4, in block No. ten, 10; lots ten, 10, eleven, 11, and twelve, 12, in block No. thirty-seven, 37; lots seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and eighty-seven, 187, and all the lots in block No. one hundred and eighty-six, 186.

Also, in the town of Nashville, lot No. sixteen, 16; and lot No. one hundred and forty-six, 146.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and

those upon Water street include all the land in front of them, to the Mississippi river.

71. *Share No. Eleven.*

Lands.

Contains in township sixty-five, 65, range five, 5, west, fractional northwest quarter of section one, 1, one hundred and fifty-six and 32–100 acres, 156 32–100; north half of fractional section two, 2, three hundred and fourteen and 94–100 acres, 314 94–100; and the southwest quarter of section six, 6, one hundred and sixty, 160, acres. In township sixty-six, 66, north, range six, 6, west, fractional northwest quarter of section thirty-two, 32, seventy-three and 50–100 acres, 73 50–100; northeast quarter of section thirty-two, 32, one hundred and sixty, 160, acres; and the southwest quarter of section twelve, 12, one hundred and sixty, 160, acres. In township sixty-six, 66, north, range five, 5, west, the southwest quarter of section five, 5, one hundred and sixty acres, 160; containing in all 1184 76–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. four, 4, five, 5, and six, 6, in block No. one, 1; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. fifty-three, 53; lots No. one, 1, two, 2, and three, 3, in block No. forty-four, 44; lots seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. eighty-seven, 87; and all the lots in block No. eighty-six, 86.

Also, in the town of Nashville, lot No. seventy-four, 74; and lot No. ninety-nine, 99.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, except lots one, 1, two, 2, and three, 3, in block No. forty-four, 44; which said three lots also include the whole of Orleans street, opposite to them; and those upon Water street include all the land in front of them, to the Mississippi river.

72. *Share No. Twelve.*

Lands.

Contains, in township sixty-seven (67) north, range five (5) west, the southwest quarter of section fifteen (15), one hundred and sixty acres (160); southwest quarter of section twenty-two (22), one hundred and sixty acres (160); southeast qr. of section twenty-seven (27), one hundred and sixty acres (160); and fractional southwest

qr. of section twenty-six (26), fifty-one 74–100 acres (51 74–100). In township sixty-seven (67) north, range six (6) west, the northeast qr. of section twenty-four (24), one hundred and sixty acres (160); the northwest qr. of section twenty-four (24), one hundred and sixty acres (160); the northwest qr. of section twenty (20), one hundred and sixty acres (160); and the northeast qr. of section nineteen (19), one hundred and sixty acres (160); containing, in all, 1171 74–100 acres.

Town Lots.

Also, in the town of Keokuk, lot number four (4), in block No. four (4); lot No. one (1), in block No. nine (9); lots No. one (1), two (2), and three (3), in block No. one hundred and seven (107); lots No. one (1), two (2), three (3), ten (10), eleven (11), and twelve (12), in block No. one hundred and seventy-two (172); and all the lots in block No. one hundred and seventy-three (173). Also, in the town of Nashville, lot twenty-five (25), and lot one hundred and fifty-five (155).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street include all the land in front of them to the Mississippi river.

73. *Share No. Thirteen.*

Lands.

Contains, in township sixty-six (66) north, range six (6) west, fractional southwest quarter of section twenty-nine (29), one hundred and thirty-two 50–100 acres (132 50–100); southeast qr. of section twenty-nine (29), one hundred and sixty acres (160); and the southeast quarter of section twenty-seven (27), one hundred and sixty acres (160). In township sixty-seven (67) north, range seven (7) west, the whole of section twenty-seven (27), six hundred and forty acres (640); and the east half of the northeast quarter of section twenty-eight (28), eighty acres (80); containing in all 1172 50–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. seven (7), eight (8), and nine (9), in block No. seventeen (17); lots No. ten (10), eleven (11), and twelve (12), in block No. thirty (30); lots No. one (1), two (2), three (3), and four (4), in block No. eighty-three (83); lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. fifty-nine (59), and all the lots in block No. fifty-eight (58).

Also, in the town of Nashville, lot No. one hundred and nine (109), and lot No. one hundred and eleven (111).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, except lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. fifty-eight (58), which said six lots also include the whole of Orleans street opposite to them, and the lot upon Water street includes all the land in front of it to the Mississippi river.

74. *Share No. Fourteen.*

Lands.

Contains, in township sixty-five (65) north, range six (6) west, fractional northeast quarter of section four (4), one hundred and twenty-four and 57–100 acres (124 57–100); northwest fractional qr. of section two (2), one hundred and fifty-nine and 79–100 acres (159 79–100); and fractional southwest quarter of section two (2), eighty-nine and 12–100 acres (89 12–100). In township sixty-seven (67) north, range seven (7) west, the south half of section twenty-four (24), three hundred and twenty acres (320); and the southeast qr. of section twenty-three (23), one hundred and sixty acres (160). In township sixty-six (66) north, range seven (7) west, fractional southwest qr. of section one (1), one hundred and forty-seven and 83–100 acres, 147 83–100; and the southeast qr. of section one, 1, one hundred and sixty acres, 160; in all containing 1161 31–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. seven, 7, and eight, 8, in block No. two, 2; lots four, 4, five, 5, and six, 6, in block No. forty-four, 44; lots No. one, 1, two, 2, three, 3, and four, 4, in block No. forty-three, 43; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. seventy-three, 73; and all the lots in block No. eighty-five, 85.

Also, in the town of Nashville, lot No. eighty-one, 81, and lot No. one hundred, 100.

Boundaries.

All the lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and lots No. four, 4, five, 5, and six, 6, in block No. forty-four, 44; lots No. one, 1, two, 2, and three, 3, and four, 4, in block No. forty-three, 43, include the whole width of Orleans street, which lies in front of them. Also lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and

twelve, 12, in block No. eighty-five, 85; and lots seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. seventy-three, include the whole width of Cedar street which lies in front of them.

75. *Share No. Fifteen.*

Lands.

Contains, in township sixty-six, 66, north, range four, 4, west, fractional northwest qr. of section thirty, 30, seventy and 65–100 acres, 70 65–100. In township sixty-six, 66, north, range five, 5, west, the northwest qr. of section twenty-five, 25, one hundred and sixty acres, 160; the northeast quarter of section twenty-six, 26, one hundred and sixty acres, 160; east half of section eighteen, 18, three hundred and twenty acres, 320; and the east half of southeast quarter of section seven, 7, eighty acres, 80. In township sixty-five, 65, north, range five, 5, west, the northwest qr. of section eight, 8, one hundred and sixty acres, 160; and the east half of the northeast qr. of section seven, 7, eighty acres, 80. In township sixty-six, 66, north, range six, 6, west, the southwest qr. of section thirty-four, 34, one hundred and sixty acres, 160; containing, in all, 1190 65–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. four (4), five (5), and six (6), in block No. fifty-four (54); lots No. four (4), five (5), and six (6), in block No. fifty (50); lots one (1), two (2), three (3), and four (4), in block No. fifty-one (51); lots seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block No. ninety-eight (98), and Chatham square, classed as a block of twelve lots.

Also in the town of Nashville, lot No. ninety-three (93) and lot No. one hundred and eighty-five (185).

Boundaries.

All the town lots and Chatham square, included in the above square, are bounded by the middle of the streets and alleys upon which they are situated.

76. *Share No. Sixteen.*

Lands.

Contains in township sixty-six (66) north, range five (5) west, fractional southwest quarter of section ten (10) one hundred and fourteen and 60–100 acres (114 60–100); in township sixty-six (66) north, range six (6) west, the fractional northwest quarter of section seven (7), one hundred and eighteen and 51–100 acres (118

51–100); the northeast quarter of section seven (7), one hundred and sixty acres (160); the west half of section sixteen (16), three hundred and twenty acres (320); southeast quarter of section sixteen (16), one hundred and sixty acres (160); and the south half of section fifteen (15), three hundred and twenty acres (320), containing in all 1193 11–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. two (2), in block No. twelve (12); lot No. five (5), in block No. fourteen (14); lots No. one (1), two (2), and three (3), in block No. twenty-nine (29); lots No. seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block No. one hundred and fifty-nine (159); and all the lots in block No. one hundred and fifty-eight (158).

Also in the town of Nashville, lot No. forty-five (45), and lot No. one hundred and seventy-one (171).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and that upon Water street includes all the land in front of it to the Mississippi river.

77. *Share No. Seventeen.*

Lands.

Contains in township sixty-seven (67) north, range four (4) west, the southeast quarter of section seven (7), one hundred and sixty acres (160), and the fractional northeast quarter of section eighteen (18), twenty-eight acres (28); in township sixty-seven (67) north, range six (6) west, the whole of section thirty-six (36), six hundred and forty acres (640); and the east half of section twenty-five (25), three hundred and twenty acres (320); containing in all 1148 acres.

Town Lots.

Also in the town of Keokuk, lot No. six (6) in block No. five (5); lot No. six (6) in block No. eleven (11); lots four (4), five (5), and six (6), in block No. ninety-four (94); lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. two hundred and two (202); and all the lots in block No. two hundred and one (201).

Also in the town of Nashville, lot No. six (6), and lot number one hundred and twenty-one (121), and lot number one hundred and thirty-six (136).

Boundaries.

All the town lots included in the above share are bounded by the

middle of the streets and alleys upon which they are situated, except lots No. six (6), block No. two hundred and two (202), and lots No. six (6) and seven (7), in block No. two hundred and one (201); which said lots also include the whole width of Fourteenth (14th) street opposite to them, and also that upon Water street includes all the land in front of it to the Mississippi river.

78. *Share No. Eighteen.*

Lands.

Contains in township sixty-six (66) north, range five (5) west, the southeast quarter of section four (4), one hundred and sixty acres (160); south half of section twenty (20), three hundred and twenty acres (320); east half of southeast quarter of section six (6), eighty acres (80); in township sixty-six (66) north, range six (6) west, the north half of section twelve, three hundred and twenty acres (320); east half of southwest quarter of section one (1), eighty acres (80); fractional northwest quarter of section two (2), one hundred and sixty-eight and 11–100 acres (168 11–100); containing in all 1128 11–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. one (1) in block No. three (3); lot No. ten (10) in block No. nine (9); lots No. four (4), five (5), and six (6), in block No. sixty-five (65); lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. one hundred and forty-eight (148); and all the lots in block No. one hundred and forty-nine (149).

Also in the town of Nashville, lot thirty-eight (38) and lot number one hundred and sixty-four (164).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street include all the land in front of them to the Mississippi river.

79. *Share No. Nineteen.*

Lands.

Contains in township sixty-six, 66, north, range seven, 7, west, fractional northwest quarter of section twenty-four, 24, ninety-four 74–100 acres, 94 74–100; fractional southwest quarter of section two, 2, twenty-four and 38–100 acres, 24 38–100; northwest quarter of section two, 2, one hundred and sixty acres, 160; fractional

southwest quarter of section twelve, 12, ninety-three 98–100 acres, 93 98–100; southeast quarter of section twelve, 12, one hundred and sixty acres, 160; in township sixty-six, 66, north, range six, 6, west, the southwest quarter of section fourteen, 14, one hundred and sixty acres, 160; in township sixty-seven, 67, north, range seven, 7, west; the north half of section thirty-five, 35, three hundred and twenty acres, 320; and the northeast quarter of section thirty-four, 34, one hundred and sixty acres, 160; containing in all 1173 10–100 acres.

Town Lots.

Also in the town of Keokuk, lots one (1) and two (2), in block No. twenty (20); lots seven (7) and eight (8), in block No. fifty-seven (57); lots ten (10), eleven (11), and twelve (12), in block No. twenty (20); lot eight, block No. eighty-four (84); lots four (4), five (5), and six (6), in block No. thirty-eight (38); lots four (4), five (5), six (6), seven (7), eight (8), and nine (9), in block No. eighty-one (81); and all the lots in block No. seventy-four (74).

Also in the town of Nashville, lots No. one hundred and seventeen (117); and lot number two hundred and thirteen (213).

Boundaries.

The town lots, No. one (1) and two (2), in block No. twenty (20), included in the above share are bounded by the middle of Carrol street, from thence in front to Mississippi river; lot No. eight, in block No. eighty-four (84), is bounded by the middle of Ridge street, from thence extending in front to the Mississippi river. Lot number two hundred and thirteen (213), in the town of Nashville, is bounded by the middle of Short street, thence extending east and north to the Mississippi river; all other lots are bounded by the middle of the streets and alleys upon which they are situated; and lot seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block No. seventy-four (74), which also include the whole middle of Cedar street in front of them.

80. *Share No. Twenty.*

Lands.

Contains, in township sixty-five, 65, north, range five, 5, west. The north half of section twenty-nine, 29, three hundred and twenty acres, 320; west half of the northeast quarter of section twenty-six, 26, eighty acres, 80; south half of section seventeen, 17, three hundred and twenty acres, 320; southeast qr. of section eighteen, 18, one hundred and sixty acres, 160; northwest quarter of section nine, 9, one hundred and sixty acres; and the northeast quarter of section eight, 8, one hundred and sixty acres, 160.

Containing in all 1200 acres.

Town Lots.

Also in the town of Keokuk, lot No. ten, 10, in block No. thirteen, 13; lot No. twelve, 12, in block No. three, 3; lots No. one, 1, two, 2, and three, 3, in block No. forty-six, 46; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and twenty, 120; and all the lots in block No. one hundred and twenty-one, 121.

Also in the town of Nashville, lot No. sixty-five, 65, and lot. No. one hundred and ninety-three, 193.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

81. *Share No. Twenty-One.*

Lands.

Contains, in township sixty-six, 66, north, range four, 4, west, fractional northwest qr. of section thirty-one, 31, nineteen and 58–100 acres, 19 58–100. In township sixty-six, 66, north, range five, 5, west, fractional northeast qr. of section thirty-six, 36, one hundred and fifty-eight acres, and 12–100, 158 12–100; northwest quarter of section thirty-six, 36, one hundred and sixty acres, 160; the north half of section thirty-five, 35, three hundred and twenty acres, 320. In township sixty-six, 66, north, range six, 6, west; fractional southwest qr. of section nineteen, 19, eighty-one and 71–100 acres, 81 71–100; and fractional northwest quarter of section nineteen, 19, one hundred and sixteen 92–100 acres, 116 92–100. In township sixty-five, 65, north, range six, 6, west; the northeast qr. of section eleven, 11, one hundred and sixty acres, 160; and the northwest qr. of section twelve, 12, one hundred and sixty acres, 160.

Containing in all 1176 33–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. one, 1, and two, 2, in block No. fifty-five, 55; lots ten, 10, eleven, 11, and twelve, 12, in block No. fifty, 50; lots nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. fifty-one, 51; lots seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. ninety-five, 95; and all the lots in block No. ninety-two, 92.

Also in the town of Nashville, lot No. ninety-five, 95; and lot No. thirty, 30.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and those upon Water street include all the land in front of them to the Mississippi river.

82. *Share No. Twenty-Two.*

Lands.

Contains, in township sixty-seven, 67, north, range five, 5, west, the south half of section sixteen, 16, three hundred and twenty acres, 320; northwest quarter of section sixteen, 16, one hundred and sixty acres, 160. In township sixty-seven, 67, north, range six, 6, west, northwest quarter of section thirty-five, 35, one hundred and sixty acres, 160; northeast quarter of section thirty-five, 35, one hundred and sixty acres, 160; the west half of the northwest qr. of section twenty-five, 25, eighty acres, 80; and the east half of section twenty-six, 26, three hundred and twenty acres, 320.

Containing in all 1200 acres.

Town Lots.

Also in the town of Keokuk, lot No. five, 5, in block No. seven, 7; lot No. eight, 8, in block No. ten, 10; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. twenty-eight, 28; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and eighty-one, 181; and all the lots in block No. one hundred and eighty, 180.

Also in the town of Nashville, lot No. twenty, 20; and lot No. one hundred and fifty, 150.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and the lot on Water street includes all the land in front of it to the Mississippi river.

83. *Share No. Twenty-three.*

Lands.

Contains, in township sixty-six (66) north, range five (5) west, the fractional southwest quarter of section eleven (11), thirteen acres (13); fractional northwest quarter of section fourteen (14), one hundred and six and 66–100 acres (106 66–100); the west half of the southwest quarter of section fourteen (14), eighty acres (80); the north

half of section twenty-eight (28), three hundred and twenty acres (320); northwest quarter of section twenty-nine (29), one hundred and sixty acres (160); the southwest quarter of section thirty-two (32), one hundred and sixty acres (160); and the east half of the southeast qr. of section thirty-one (31), eighty acres (80), in township sixty-six (66) north, range six (6) west; the northeast quarter of section twenty-five (25), one hundred and sixty acres (160); and the east half of the northwest qr. of section twenty-five (25), eighty acres (80); containing in all 1159 66–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. eleven (11), in block No. twelve (12); lot No. two (2), in block No. fifteen, (15); lots No. four (4), five (5), and six (6), in block No. forty-nine (49); lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. one hundred and thirty-nine (139), and all the lots in block No. one hundred and thirty-eight (138).

Also, in the town of Nashville, lot No. fifty-four (54), and lot No. one hundred and eighty (180).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

84. *Share No. Twenty-four.*

Lands.

Contains, in township sixty-seven (67) north, range seven (7) west, the fractional southeast qr. of section thirty-two (32), one hundred and forty-nine 56–100 acres (149 56–100); fractional southwest qr. of section thirty-two (32), twenty-five (25) acres; fractional southeast quarter of section eleven (11), one hundred and six acres (106); northeast quarter of section fourteen (14), one hundred and sixty acres (160); and the northeast quarter of section twenty-three (23), one hundred and sixty acres (160); in township sixty-six (66) north, range seven (7) west, the fractional northeast qr. of section five (5), eleven and 88–100 acres (11 88–100); north half of section one (1), three hundred and twenty acres (320); northeast qr. of section two (2), one hundred and sixty acres (160); and fractional southeast qr. of section two (2), forty-seven 55–100 acres (47 55–100); containing in all 1139 93–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. ten, 10, eleven, 11, and

twelve, 12, in block No. seventeen, 17; lots five, 5, six, 6, seven, 7, and eight, 8, in block No. eighty-three, 83; lots No. one, 1, two, 2, and three, 3, in block No. eighty-one, 81; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. forty, 40; and all the lots in block No. forty-one, 41.

Also, in the town of Nashville, lot No. one hundred and ten, 110, and lot No. one hundred and twelve, 112.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and lot No. seven, 7, and eight, 8, in block No. eighty-three, 83, also, include the whole width of Cedar street in front of them.

85. *Share No. Twenty-five.*

Lands.

Contains, in township sixty-seven, 67, north, range five, 5, west, fractional southeast quarter of section thirty-four, 34, one hundred and twenty-seven 5–100 acres, 127 5–100; southwest qr. of section thirty-four, 34, one hundred and sixty acres, 160; southeast qr. of section thirty-three, 33, one hundred and sixty acres, 160; northeast quarter of section thirty-two, 32, one hundred and sixty acres, 160; and the east half of the northwest qr. of section thirty-two, eighty acres, 80. In township sixty-seven north, range six, 6, west, the northeast qr. of section twenty-eight, 28, one hundred and sixty acres, 160; and the south half of section thirty-five, 35, three hundred and twenty acres, 320; containing in all, 1167 5–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. five, 5, in block No. four, 4; lot No. two, 2, in block No. nine, 9; lots No. four, 4, five, 5, and six, 6, in block No. one hundred and seven, 107; lots No. four, 4, five, 5, six, 6, seven, 7, eight, 8, and nine, 9, in block No. one hundred and seventy-two, 172; and all the lots in block No. one hundred and seventy-one, 171.

Also in the town of Nashville, lot No. twenty-six, 26; lot No. one hundred and fifty-six, 156.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are *are* situated,

and those upon Water street, also, include all the land in front of them to the Mississippi river.

86. *Share No. Twenty-six.*

Lands.

Contains, in township sixty-seven, 67, north, range four, 4, west, the fractional southwest quarter of section five, 5, seventy and 61–100 acres, 70 61–100; northwest quarter of section eight, one hundred and sixty acres, 160; fractional southwest quarter of section eight, 8, one hundred and fifty 40–100 acres, 150 40–100; fractional northwest qr. of section seventeen, 17, ten acres, 10, in township sixty-seven, 67, north, range six, 6, west, the whole of fractional section twelve, four hundred and seventy-seven and 54–100 acres, 477 54–100; and the west half of section thirteen, 13, three hundred and twenty acres, 320; containing in all 1188 55–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. four, 4, in block No. five, 5; lot No. four, 4, in block No. eleven, 11; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and six, 106; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. two hundred and five, 205; and all the lots in block No. two hundred and four, 204.

Also in the town of Nashville, lot No. four (4), lot No. one hundred and nineteen (119), and lot No. one hundred and thirty-four (134).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and lot six (6) in block No. two hundred and five (205), and lot six (6) and seven (7) in block two hundred and four (204), also include the whole width of Fourteenth street opposite to them; those lots upon Water street also include all the land in front of them to the Mississippi river.

87. *Share No. Twenty-seven.*

Lands.

Contains, in township sixty-six (66) north, range five (5) west, the southeast qr. of section sixteen (16), one hundred and sixty acres (160); in township sixty-five (65) north, range five (5) west, the

southwest qr. of section five (5), one hundred and sixty acres (160); the west half of the southeast qr. of section five (5), eighty acres (80); the south half of section two (2), three hundred and twenty acres (320); southeast qr. of section three (3), one hundred and sixty acres (160); the east half of the southwest qr. of section three (3), eighty acres (80); and the southwest qr. of section ten (10), one hundred and sixty acres (160); containing in all 1120 acres.

Town Lots.

Also in the town of Keokuk, lot No. four (4), in block No. thirteen (13); lot No. seven (7), in block No. fifteen (15); lots No. seven (7), eight (8), and nine (9), in block No. forty-eight (48); lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. one hundred and twenty-nine (129); and all the lots in block No. one hundred and thirty (130).

Also in the town of Nashville, lot No. fifty-nine (59), and lot No. one huudred and eighty-seven (187).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and the lot upon Water street also includes all the land in front of it to the Mississippi river.

88. *Share No. Twenty-eight.*

Lands.

Contains, in township sixty-six (66) north, range five (5) west, the west half of the southwest qr. of section fifteen (15), eighty acres (80); northeast quarter of section seven (7), one hundred and sixty acres (160); and the south half of section thirty-four (34), three hundred and twenty acres (320); in township sixty-five (65) north, range five (5) west, fractional northeast quarter of section six (6), one hundred and fifty-three 84–100 acres (153 84–100); fractional northwest quarter of section six (6), one hundred and fifty-three and 60–100 acres (153 60–100); and the south half of section nine (9), three hundred and twenty acres (320); containing in all 1187 44–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. three (3), in block No. thirteen (13); lot No. six (6), in block No. fifteen (15); lots No. four (4), five (5), and six (6), in block No. forty-eight (48); lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. one

hundred and thirty-four (134); and all the lots in block one hundred and thirty-one (131).

Also in the town of Nashville, lot No. fifty-eight (58), and lot No. one hundred and eighty-four (184).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

Lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. one hundred and thirty-one (131); also includes the whole width of Orleans street in front of said block; and the lot upon Water street includes all the land in front of it to the Mississippi river.

89. *Share No. Twenty-nine.*

Lands.

Contains, in township sixty-seven (67) north, range five (5) west, the northeast quarter of section sixteen (16), one hundred and sixty acres (160); southeast quarter of section twenty-eight (28), one hundred and sixty acres (160); the southwest qr. of section twenty-seven (27), one hundred and sixty acres (160); and the west half of the northwest qr. of section twenty-seven (27), eighty acres (80); in township sixty-seven (67) north, range six (6) west, the fractional south qr. of section thirty-one (31), one hundred and twenty-eight 60–100 acres (128 60–100); southeast qr. of section thirty-one (31), one hundred and sixty acres (160); and the west half of section twenty-six (26), three hundred and twenty acres (320); containing in all 1168 60–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. two (2), in block No. four (4); lot No. eleven (11), in block No. ten (10); lots No. seven (7), eight (8), and nine (9), in block No. twenty-seven (27); lots seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block No. one hundred and seventy-five (175); and all the lots in block No. one hundred and seventy-six (176).

Also in the town of Nashville, lot No. twenty-three (23), and lot No. one hundred and twenty-three (123).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and those upon Water street also include all the land in front of them to the Mississippi river.

90. *Share No. Thirty.*

Lands.

Contains, in township sixty-seven (67) north, range five (5) west, the south half of section twelve (12), three hundred and twenty acres (320); fractional northeast quarter of section thirteen (13), one hundred and thirty-seven and 34–100 acres (137 34–100); in township sixty-seven (67) north, range six (6) west, the whole of section thirty-three (33), six hundred and forty acres (640): containing in all 1097 34–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. twelve (12), in block No. five (5); lot No. nine (9), in block No. eleven (11); lots No. one (1), two (2), and three (3), in block No. sixty-four (64); lots No. seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block No. one hundred and ninety-six (196); and all the lots in block No. one hundred and ninety-seven (197).

Also in the town of Nashville, lot No. eight (8), lot No. one hundred and twenty-three (123), and lot No. one hundred and thirty-eight (138).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and lot No. seven (7), in block No. one hundred and ninety-six (196), lots six (6) and seven (7), in block one hundred and ninety-seven (197), also include the whole width of Fourteenth street opposite to them; and the lot upon Water street includes all the land in front of its boundary to the Mississippi river.

91. *Share No. Thirty-one.*

Lands.

Contains, in township sixty-seven (67) north, range seven (7) west, the fractional southwest quarter of section eighteen (18), one hundred and eighty-one and 63–100 acres (181 63–100); northwest quarter of section thirty-four (34), one hundred and sixty acres (160); southeast qr. of section thirty-four (34), one hundred and sixty acres (160); fractional southwest quarter of section eleven (11), one hundred and three 93–100 acres (103 93–100); fractional southeast quarter of section ten (10), ninety-three 45–100 acres (93 45–100); northwest qr. of section fourteen (14), one hundred and sixty acres (160); and the northeast qr. of section fifteen (15), one hundred and sixty acres (160), in township sixty-six (66) north, range seven

(7) west, the fractional northeast quarter of section three (3), one hundred and forty-three and 30–100 acres (143 30–100); containing in all 1162 31–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. seven, 7, eight, 8, and nine, 9, in block No. twenty, 20; lots No. six, 6, and seven, 7, in block No. eighty-four, 84; lot No. ten, 10, in block No. fifty-seven, 57; lots No. seven, 7, eight, 8, and nine, 9, in block No. thirty-eight, 38; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. seventy-nine, 79; and all the lots in block thirty-two, 32.

Also in the town of Nashville, lot No. ninety-two, 92, and lot No. two hundred and nine, 209.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street also include all the land in front of them to the Mississippi river.

92. *Share No. Thirty-two.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the fractional southeast quarter of section three, 3, one hundred and six and 57–100 acres, 106 57–100; in township sixty-seven, 67, north, range six, 6, west, the southwest qr. of section twenty-one, 21, one hundred and sixty acres, 160; southeast qr. of section twenty, 20, one hundred and sixty acres, 160; and the east half of the southwest qr. of section twenty, 20, eighty acres, 80; in township sixty-seven, 67, north, range five, 5, west, the fractional northeast quarter of section thirty-four, 34, one hundred and fifty-seven 58–100 acres, 157 58–100; fractional northwest quarter of section thirty-five, 35, six 54–100 acres, 6 54–100; northwest quarter of section thirty-four, 34, one hundred and sixty acres, 160; and the northeast quarter of section thirty-three, 33, one hundred and sixty acres, 160; in township sixty-six, 66, north, range six, 6, west, the fractional northeast qr. of section five, 5, one hundred and sixty-one and 8–100 acres, 161 8–100; containing in all 1151 77–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. ten, 10, in block No. four, 4; lot No. seven, 7, in block No. nine, 9; lots seven, 7, eight, 8, and nine, 9, in block No. ninety-three, 93; lots No. seven, 7, eight,

8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and sixty-three, 163; and all the lots in block No. one hundred and sixty-four, 164.

Also, in the town of Nashville, lot No. thirty-three, 33, and lot No. one hundred and sixty-one, 161.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

93. *Share No. Thirty-three.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the west half of the southeast quarter of section twenty-four, 24, eighty acres, 80; south half of section twenty-three, 23, three hundred and twenty acres, 320; and the southwest qr. of section twenty-four, 24, one hundred and sixty acres, 160; in township sixty-six, 66, north, range 6 west, the fractional southwest qr. of section eighteen, 18, one hundred and sixteen and 82–100 acres, 116 82–100; and the north half of section thirteen, 13, three hundred and twenty acres, 320; in township sixty-five, 65, north, range five, 5, west, the northeast quarter of section seventeen, 17, one hundred and sixty acres, 160; containing in all 1156 82--100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. one, 1, and two, 2, in block No. fifty-six, 56; lots No. eleven, 11, and twelve, 12, in block No. fifty-four; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. twenty-four, 24; lots No. five, 5, six, 6, seven, 7, and eight, 8, in block No. twenty-five, 25; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred, 100; and all the lots in block No. ninety-seven, 97.

Also, in the town of Nashville, lot No. ninety, 90, and lot No. two hundred and six, 206.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated. Lots No. one, 1, and two, 2, in block No. fifty-six, 56, also include the land in front of them to the river, parallel with the middle of Fulton street, and a line with the middle of block No. fifty-four, 54. Lots one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred, 100, also include the whole width of Orleans street in front of them.

94. *Share No. Thirty-four.*

Lands.

Contains, in township sixty-six (66) north, range six (6) west, the east half of the southeast quarter of section thirty-three (33), eighty acres (80). In township sixty-five (65) north, range six (6) west, fractional northwest quarter of section eleven (11), one hundred and twelve and 37–100 acres (112 37–100). In township sixty-seven (67) north, range seven (7) west, the northwest quarter of twenty-three (23), one hundred and sixty acres (160); north half of section twenty-two (22), three hundred and twenty acres (320); north half of section twenty-one (21), three hundred and twenty acres (320); and the northeast quarter of section twenty (20), one hundred and sixty acres (160). Containing in all 1152 37–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. nine, 9, and ten, 10, in block No. two, 2, lots seven, 7, eight, 8, and nine, 9; in block No. forty-four, 44, lots five, 5, six, 6, seven, 7, and eight, 8; in block No. forty-three, 43, lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6; in block No. seventy-three, 73, and all the lots in block No. seventy-two, 72.

Also in the town of Nashville, lot No. eighty-two, 82, and lot No. one hundred and one, 101.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated. Lots five, 5, and six, 6, in block No. forty three, 43, include also the whole width of Orleans street in front of them.

95. *Share No. Thirty-five.*

Lands.

Contains, in township sixty-five, 65, north, range five, 5, west, the southwest quarter of section twenty-eight, 28, one hundred and sixty acres, 160; the south half of section twenty-nine, 29, three hundred and twenty acres, 320; fractional southeast quarter of section thirty, 30, one hundred and twelve and 89–100 acres, 112 89–100; and the south fraction of the southwest quarter of section thirty, 30, five, 5, 63–100 acres, 5 63–100. In township sixty-six, 66, north, range five, 5, west, the fractional northwest quarter of section seven, 7, one hundred and fifty-eight and 15–100 acres, 158 15–100. In township sixty-five, 65, north, range six, 6,

west, the north half of section one, 1, three hundred and twenty acres, 320; and the southeast quarter of section one, 1, one hundred and sixty acres, 160. Containing in all 1236 67–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. twelve, in block No. thirteen, 13; lot No. ten, 10, in block No. three, 3; lots No. seven, 7, eight, 8, and nine, 9, in block No. forty-six, 46; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and seventeen, 117; and all the lots in block No. one hundred and eighteen, 118.

Also in the town of Nashville, lot No. sixty-eight, 68, and lot No. one hundred and ninety-six, 196.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

96. *Share No. Thirty-six.*

Lands.

Contains, in township sixty-seven, 67, north, range seven 7, west, the fractional southeast quarter of section nineteen, 19, nine and 9–100 acres, 9 9–100; fractional southwest quarter of section twenty, 20, one hundred and two 76–100 acres, 102 76–100; southwest quarter of section twenty-five, 25, one hundred and sixty acres, 160; south half of section twenty-six, 26, three hundred and twenty acres, 320; northwest quarter of section *of section* thirty-six, 36, one hundred and sixty acres, 160; southeast quarter of section thirty-six, 36, one hundred and sixty acres, 160; and the east half of the southwest quarter of section thirty-six, 36, eighty acres, 80; also all of fractional township sixty-seven, 67, north, range eight, 8, west, containing one hundred and ninety-four and 55–100, 194 55–100 acres. Containing in all 1186 40–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. three, 3, and four, 4, in block No. nineteen, 19; lots No. five, 5, and six, 6, in block No. twenty, 20; lots seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. thirty-one, 31; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. seventy-six, 76; and all the lots in block No. seventy-seven, 77.

Also in the town of Nashville, lot No. two hundred and eleven, 211.

Boundaries.

All the town lots included in the above share are bounded by

the middle of the streets and alleys upon which they are situated; and those upon Water street, also include all the land in front of them to the Mississippi river.

97. *Share No. Thirty-seven.*

Lands.

Contains, in township sixty-seven, 67, north, range 5, west, the fractional southwest quarter of section two, 2, nine and 41–100 acres, 9 41–100; and the west half of section eleven, 11, three hundred and twenty acres, 320. In township sixty-seven, 67, north, range 6, west, the whole of fractional section thirty, 30, five hundred and seventy-seven 15–100 acres, 577 15–100; and the north half of fractional section thirty-one, 31, two hundred and eighty-nine 26–100 acres, 289 26–100. Containing in all 1195 82–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. five, 5, in block No. six, 6; lot No. two, 2, in block No. ten, 10; lots No. four, 4, five, 5, and six, 6, in block No. thirty-seven, 37; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and ninety, 190; and all the lots in block No. one hundred and eighty-nine, 189.

Also in the town of Nashville, lot No. fourteen, 14, and lot No. one hundred and forty-four, 144.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and those upon Water street, include also all the land in front of them to the Mississippi river.

98. *Share No. Thirty-eight.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the west half of the northeast quarter of section twenty-four, 24, eighty acres, 80; southwest quarter of section thirteen, 13, one hundred and sixty acres, 160; and the northwest quarter of section twenty-four, 24, one hundred and sixty acres, 160. In township sixty-five, 65, north, range six, 6, west, the fractional northeast quarter of section fourteen, 14, one hundred and thirty-six 95–100 acres, 136 95–100; the north half of section thirteen, 13, three hundred and twenty acres, 320; and the fractional northeast quarter of sec-

tion three, 3, one hundred and forty and 40–100 acres, 140 40–100. In township sixty-five, 65, north, range five, 5, west, the southeast quarter of section sixteen, 16, one hundred and sixty acres, 160. Containing in all 1157 35–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. one, 1, two, 2, and three, 3, in block No. fifty-seven, 57; lots No. nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. twenty-three, 23; lots No. four, 4, five, 5, and six, 6, in block No. twenty-four, 24; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and three, 103; and all the lots in block No. one hundred and two, 102.

Also, in the town of Nashville, lot No. seventy-nine, 79, and lot No. two hundred and five, 205.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street also include all the land in front of them to the Mississippi river.

99. *Share No. Thirty-nine.*

Lands.

Contains in township sixty-seven, 67, north, range four, 4, west, the fractional southeast qr. of section five, 5, eighty acres, 80, fractional northeast qr. of section eight, 8, forty-one and 10–100 acres, 41 10–100; also, in the northeast qr. of section eight, 8, over the slough, one hundred and six and 90–100 acres, 106 90–100, and the fractional southeast qr. of section eight, 8, twenty-eight, 28, and 60–100 acres, 28 60–100, in township sixty-seven, 67, north, range six, 6, west, the fractional northwest qr. of section ten, 10, thirty-seven and 61–100 acres, 37 61–100, fractional southwest qr. of section eight, 8, one hundred and fifty-six and 91–100 acres, 156 91–100, and the north half of section sixteen, 16, three hundred and twenty acres, 320, and all of fractional section nine, 9, three hundred and forty-two and 28–100 acres, 342 28–100. Containing in all 1113 40–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. three, 3, in block No. five, 5; lot No. three, 3, in block No. eleven, 11; lots No. seven, 7, eight, 8, and nine, 9, in block No. one hundred and six, 106; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in blocks No. two hundred and five, 205; and all the lots in block No. two hundred and six, 206.

Also, in the town of Nashville, lot No. three, 3, lot No. one hundred and eighteen, 118, and lot No. one hundred and thirty-three, 133.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; lot No. seven, 7, in block No. two hundred and five, 205; and lots No. six, 6, and seven, 7, in block No. two hundred and six, 206, also include the whole width of Fourteenth street opposite to them, and the lots upon Water street include all the land in front of them to the Mississippi river.

100. *Share No. Forty.*

Lands.

Contains in township sixty-six, 66, north, range five, 5, west, the west half of the southeast qr. of section fifteen, 15, eighty acres, 80, and the northeast qr. of section fourteen, 14, one hundred and sixty acres, 160; in township sixty-five, 65, north, range five, 5, west, the north half of section four, 4, three hundred and two and 60–100 acres, 302 60–100, north half of fractional section five, 5, three hundred and one and 48–100 acres, 301 48–100; northeast quarter of section nine, 9, one hundred and sixty acres, 160; and the northwest qr. of section ten, 10, one hundred and sixty acres, 160. Containing in all 1164 8–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. one, 1, in block No. thirteen, 13; lot No. four, 4, in block No. fifteen, 15; lots No. ten, 10, eleven, 11, and twelve, 12; in block No. forty-nine, 49; lots seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and thirty-four, 134; and all the lots in block No. one hundred and thirty-five, 135.

Also, in the town of Nashville, lot No. fifty-six, 56; and lot No. one hundred and eighty-two, 182.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and the lots upon Water street include all the land in front of them to the Mississippi river.

101. *Share No. Forty-one.*

Lands.

Contains in township sixty-six, 66, north, range five, 5, west, the

east half of the southwest quarter of section fifteen, 15, eighty, 80, acres, and the southwest qr. of section eight, 8, one hundred and sixty acres, 160; in township sixty-five, 65, range five, 5, west, the north half of fractional section three, 3, three hundred and ten and 4–100, 310 4–100 acres; southeast quarter of section ten, 10, one hundred and sixty acres, 160, southeast qr. of section eight, 8, one hundred and sixty, 160, acres; and the north half of section fifteen, 15, three hundred and twenty, 320 acres. Containing in all 1190 4–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. two, 2, in block No. thirteen, 13; lot No. five, 5, in block No. fifteen, 15; lots No. one, 1, two, 2, and three, 3, in block No. forty-eight, 48; lots No. one, 1, lot No. two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and thirty-seven, 137; and all the lots in block No. one hundred and thirty-six, 136.

Also, in the town of Nashville, lot No. fifty-seven, 57, and lot No. one hundred and eighty-three, 183.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and the lot upon Water street also includes all the land in front of it to the Mississippi river.

102. *Share No. Forty-Two.*

Lands.

Contains, in township sixty-six, 66, north, range six, 6, west, the northwest quarter of section thirty-three, 33, one hundred and sixty, 160 acres; southwest qr. of section twenty-three, 23, one hundred and sixty, 160, acres; and the southeast quarter of section twenty-two, 22, one hundred and sixty, 160, acres; in township sixty-seven, 67, north, range seven, 7, west; the fractional southeast quarter of section eight, 8; fifty-seven 80–100, 57 80–100, acres; northeast quarter of section seventeen, 17, one hundred and sixty, 160, acres; south half of section twenty-one, 21, three hundred and twenty, 320, acres; and the southwest quarter of section twenty-three, 23, one hundred and sixty, 160, acres. Containing in all 1177 80–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. one, 1, two, 2, and three, 3, in block No. eighteen, 18; lots No. nine, 9, ten, 10, eleven, 11,

and twelve, 12, in block No. 83; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. eighty-one, 81; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. forty, 40; and all the lots in block No. thirty-nine, 39.

Also in the town of Nashville, lot No. one hundred and thirteen, 113; and lot No. one hundred and eighty-six, 186.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; lots No. nine, 9, ten, 10, and eleven, 11, in block No. eighty-three, 83, include also the whole width of Cedar street in front of them; lot No. twelve, 12, in block No. eighty-three, 83, includes the whole width of Cedar street, and all the land parallel with the middle of the alley in the rear of said to the Mississippi river. Those other lots upon Water street also include all the land in front of them to the Mississippi river.

103. *Share No. Forty-Three.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the southeast quarter of section twenty-six, 26, one hundred and sixty, 160, acres; southwest quarter of section twenty-seven, 27, one hundred and sixty, 160, acres; and the fractional southwest quarter of section eighteen, 18, one hundred and fifty-eight, 80–100, 158 80–100, acres. In township sixty-six, 66, north, range six, 6, west, the southwest quarter of section twenty, 20, one hundred and sixty, 160, acres; and the northwest quarter of section twenty-nine, 29, one hundred and sixty, 160, acres. In township sixty-five, 65, north, range five, 5, west, the southeast quarter of section six, 6, one hundred and sixty, 160, acres. In township sixty-seven, 67, north, range seven, 7, west, the north half of fractional section nineteen, 19, two hundred and twenty-one, 97–100, 221 97–100, acres.

Containing in all 1180 77–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. one, 1, two, 2, and three, 3, in block No. one, 1; lots No. nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. fifty-two, 52; lots No. seven, 7, eight, 8, and nine, 9, in block No. fifty-three, 53; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. eighty-seven, 87; and all the lots on block No. eighty-eight, 88.

Also in the town of Nashville, lot No. seventy-three, 73; and lot No. ninety-eight, 98.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street also include all the land in front of them to the Mississippi river.

104. *Share No. Forty-Four.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the west half of the southeast quarter of section nine, 9, eighty, 80, acres; northeast quarter of section sixteen, 16, one hundred and sixty 160, acres; southeast quarter of section seventeen, 17, one hundred and sixty, 160, acres; and the southwest qr. of section seventeen, 17, one hundred and sixty, 160, acres. In township sixty-six, 66, north, range six, 6, west, the north half of fractional section eighteen, 18, two hundred and seventy-seven 2–100, 277 2–100 acres; northwest quarter of section seventeen, 17, one hundred and sixty, 160, acres; and the southwest quarter of section eight, 8, one hundred and sixty acres, 160. Containing in all 1157 2–100 acres.

Town Lots.

Also in the town of Keokuk, lot four, 4, in block No. twelve, 12; lot No. seven, 7, in block No. fourteen, 14; lots No. seven, 7, eight, 8, and nine, 9, in block No. twenty-nine, 29; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and thirty-two, 132; and all the lots in block No. one hundred and sixty-one, 161.

Also in the town of Nashville, lot No. forty-seven, 47; and lot No. one hundred and seventy-three, 173.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and thirty-two, 132; and lots one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and sixty-one, 161, includes the whole middle of Orleans street in front of them; and the lot upon Water street includes all the land in front of it to the Mississippi river.

105. *Share No. Forty-Five.*

Lands.

Contains in township sixty-six, 66, north, range five, 5, west, the fractional southeast quarter of section thirty-six, 36, one hundred and three, 18–100, 103 18–100, acres; southwest quarter of section twenty-six, 26, one hundred and sixty, 160, acres; and the southeast quarter of section twenty-seven, 27, one hundred and sixty, 160, acres. In township sixty-six, 66, north, range six, 6, west, the northwest quarter of section twenty-seven, 27, one hundred and sixty, 160, acres; and the southeast quarter of section twenty-eight, 28, one hundred and sixty, 160, acres. In township sixty-five, 65, north, range five, 5, west, the northwest quarter of section seventeen, 17, one hundred and sixty, 160, acres.

Also in township sixty-six, 66, north, range five, 5, west, the northeast quarter of section thirty-four, 34, one hundred and sixty, 160, acres, and the east half of the northwest quarter of section thirty-four, 34, eighty, 80, acres; containing in all 1143 18–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. one, 1, two, 2, and three, 3, in block No. two, 2; lots No. one, 1, two, 2, three, 3, four, 4, in block No. fifty-two, 52; lots No. one, 1, two, 2, and three, 3, in block No. fifty-three, 53; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. ninety, 90; and all the lots in block No. ninety-one, 91.

Also in the town of Nashville, lot No. thirty-five, 35, lot No. ninety-six, 96, and lot No. one hundred and thirty, 130.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street also include all the land in front of them to the Mississippi river.

106. *Share No. Forty-six.*

Lands.

Contains in township sixty-seven, 67, north, range four, 4, west, the fractional southwest quarter of section four, 4, eighty-nine and 67–100, 89 67–100, acres; fractional northwest quarter of section nine, 9, twenty-four 60–100, 24 60–100, acres; in township sixty-seven, 67, north, range six, 6, west, the whole of fractional section eleven, 11, four hundred and twenty-eight 51–100, 428 51–100,

acres; the southeast quarter of section twenty-three, 23, one hundred and sixty, 160, acres; and the southwest quarter of section twenty-four, 24, one hundred and sixty, 160, acres; containing in all 1182 87–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. two, 2, in block No. five, 5; lot No. two, 2, in block No. eleven, 11; lots No. four, 4, five, 5, and six, 6, in block No. one hundred and six, 106; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. two hundred and eight, 208; and all the lots in block No. two hundred and seven, 207.

Also in the town of Nashville, lot No. two, 2, and lot No. one hundred and thirty-two, 132.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated. Lot No. six, 6, in block No. two hundred and eight, 208, lots six, 6, seven, 7, in block two hundred and seven, 207, include the whole width of Fourteenth street opposite to them. The lots upon Water street also include all the land in front of them to the Mississippi river.

107. *Share No. Forty-seven.*

Lands.

Contains in township sixty-six, 66, north, range 5, five, west, the southwest quarter of section four, 4, one hundred and sixty, 160, acres; the fractional west half of section six, 6, three hundred and fifteen 16–100, 315 16–100, acres; and the west half of the southeast quarter of section six, 6, eighty, 80, acres. In township sixty-six, 66, north, range six, 6, west, the fractional north half of section three, 3, three hundred and twenty-eight 63–100, 328 63–100, acres; the southeast quarter of section twenty-four, 24, one hundred and sixty, 160, acres; and the east half of the southwest quarter of section twenty-four, 24, eighty, 80, acres; containing in all 1123 79–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. two, 2, in block No. three, 3; lot No. eleven, 11, in block No. nine, 9; lots No. seven, 7, eight, 8, and nine, 9, in block No. sixty-five, 65; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and fifty-one, 151; and all the lots in block No. one hundred and fifty, 150.

Also in the town of Nashville, lot No. thirty-nine, 39, and lot No. one hundred and sixty-five, 165.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street also include all the land in front of them to the Mississippi river.

108. *Share No. Forty-eight.*

Lands.

Contains in township sixty-five, 65, north, range five, 5, west, the fractional south half of section thirteen, 13, two hundred and twelve 68–100 acres, and the south half of section fourteen, 14, three hundred and twenty, 320, acres. In township sixty-six, 66, north, range six, 6, west, the north half of section twenty-four, 24, three hundred and twenty, 320, acres; the northeast quarter of section twenty-three, 23, one hundred and sixty, 160, acres; and the northeast quarter of section twenty-eight, 28, one hundred and sixty, 160, acres; containing in all 1172 68–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. nine, 9, in block No. five, 5; lot No. seven, 7, in block No. three, 3; lots No. four, 4, five, 5, and six, 6, in block forty-five, 45; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and fourteen, 114; and all the lots in block No. one hundred and thirteen, 113.

Also in the town of Nashville, lot No. seventy-one, 71, and lot No. one hundred and ninety-nine, 199.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

109. *Share No. Forty-nine.*

Lands.

Contains in township sixty-six, 66, north, range four, 4, west, the fractional southwest quarter of section thirty, 30, sixty-three and 61–100 acres, 63 61–100. In township sixty-six, 66, north, range five, 5, west, the south half of section twenty-five, 25, three hundred and twenty, 320, acres. In township sixty-six, 66, north, range six, 6, west, the east half of section twenty, 20, three hundred and

twenty, 320, acres. In township sixty-six, 66, north, range seven, 7, west, the northeast quarter of section twenty-four, 24, one hundred and sixty, 160, acres; and the fractional south half of section twenty-four, 24, forty-eight 73–100 acres, 48 73–100. In township sixty-five, 65, north, range five, 5, west, the west half of the northeast quarter of section seven, 7, eighty, 80, acres; and the northwest quarter of section seven, 7, one hundred and sixty, 160, acres; containing in all 1152 34–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. one, 1, two, 2, and three, 3, in block No. fifty-four, 54; lots No. seven, 7, eight, 8, and nine, 9, in block No. fifty, 50; lots No. five, 5, six, 6, seven, 7, and eight, 8, in block No. fifty-one, 51; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. ninety-five, 95; and all the lots in block No. ninety-six, 96.

Also, in the town of Nashville, lot No. twenty-nine, 29, and lot No. ninety-four, 94.

Boundaries.

All the lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and lot No. one, 1, and two, 2, in block No. fifty-four, 54, also includes all the land in front of them, parallel with the middle of Franklin street, to the Mississippi river.

110. *Share No. Fifty.*

Lands.

Contains, in township sixty-five, 65, north, range five, 5, west, the fractional northwest quarter of section thirty-three, 33, one hundred and fifty-eight 86–100, 158 86–100; fractional southwest quarter of section thirty-three, 33, fifty-two, 52, acres; northeast quarter of section thirty-two, 32, one hundred and sixty, 160, acres; fractional southeast quarter of section thirty-two, 32, one hundred and fourteen 10–100 acres, 114 10–100; northwest quarter of section thirty-two, 32, one hundred and sixty acres, 160; fractional southwest quarter of section thirty-two, 32, seventy-nine 81–100 acres, 79 81–100; fractional northeast quarter of section thirty-one, 31, one hundred and fifty-four 92–100 acres, 154 92–100; fractional northwest quarter of section thirty-one, 31, sixty-eight and 87–100 acres, 68 87–100; and the fractional southeast quarter of section thirty-one, 31, two and 16–100 acres, 2 16–100; in township sixty-six, 66, north, range five, 5, west, the fractional southwest quarter of section seven, 7, one hundred and fifty-seven 76–100 acres, 157

76–100; and the west half of the southeast quarter of section seven, 7, eighty, 80, acres; containing in all 1188 48–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. seven, 7, in block No. five, 5; lot No. nine, 9, in block No. three, 3; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. forty-six, 46; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and seventeen, 117; and all the lots in block No. one hundred and sixteen, 116.

Also in the town of Nashville, lot No. sixty-nine, 69, and lot No. one hundred and ninety-seven, 197.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated. Lots seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and sixteen, 116, also include the whole width of Cedar street in front of them.

111. *Share No. Fifty-one.*

Lands.

Contains, in township sixty-six, 66, north, range six, 6, west, the east half of the southwest quarter of section thirty-three, 33, eighty, 80, acres; in township sixty-five, 65, north, range six, 6, west, the southeast quarter of section two, 2, one hundred and sixty acres, 160; and the southeast quarter of section one, 1, one hundred and sixty, 160, acres; in township sixty-seven, 67, north, range seven, 7, west, the fractional southwest quarter of section twelve, 12, one hundred and twenty-four and 88–100 acres, 124 88–100; northwest quarter of section thirteen, 13, one hundred and sixty, 160, acres; northwest quarter of section twenty-five, 25, one hundred and sixty acres, 160, and the north half of section twenty-six, 26, three hundred and twenty acres, 320; containing in all 1164 88–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. four, 4, five, 5, and six, 6, in block No. sixteen, 16; lots No. seven, 7, eight, 8, and nine, 9, in block No. forty-five, 45; lots No. four, 4, five, 5, and six, 6, in block No. forty-two, 42; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. seventy, 70; and all the lots in block No. sixty-nine, 69.

Also, in the town of Nashville, lot No. eighty-four, 84, and lot No. one hundred and three, 103.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

112. *Share No. Fifty-two.*

Lands.

Contains, in township sixty-seven, 67, north, range four, 4, west, the fractional southwest quarter of section six, 6, fifty and 90–100 acres, 50 90–100; and the northwest quarter of section seven, 7, one hundred and sixty acres, 160; in township sixty-seven, 67, north, range five, 5, west, fractional southeast quarter of section one, 1, forty and 46–100 acres, 40 46–100; northeast quarter of section twelve, 12, one hundred and sixty acres, 160; fractional northwest quarter of section seven, 7, eighty-eight 82–100 acres, 88 82–100; south half of section seven, 7, three hundred and twenty acres, 320; fractional northwest quarter of section eighteen, 18, one hundred and fifty-nine 26–100 acres, 159 26–100; and the fractional southwest quarter of section eighteen, 18, one hundred and fifty-seven 80–100 acres, 157 80–100; containing in all 1137 12–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. ten, 10, in block No. five, 5; lot No. seven, 7, in block No. eleven, 11; lots No. seven, 7, eight, 8, and nine, 9, in block No. ninety-four, 94; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and ninety-nine, 199; and all the lots in block No. two hundred, 200.

Also in the town of Nashville, lot No. seven (7), lot No. one hundred and twenty-two (122), and lot No. one hundred and thirty-seven (137).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated. Lot No. seven (7), in block No. one hundred and ninety-nine (199), and lots six (6) and seven (7), in block No. two hundred (200), include whole width of Fourteenth street opposite to them.

113. *Share No. Fifty-three.*

Lands.

Contains, in township sixty-five (65) north, range six (6) west, the fractional northwest quarter of section four (4), ninety-seven and

8–100 acres (97 8–100); and fractional northeast quarter of section five (5), twenty-eight 61–100 acres (28 61–100). In township sixty-seven (67) north, range seven (7) west, the fractional southwest quarter of section ten (10), eighty-three 4–100 acres (83 4–100); northwest quarter of section fifteen (15), one hundred and sixty acres (160); the south half of section fourteen (14), three hundred and twenty acres (320); the south half of section fifteen (15), three hundred and twenty acres (320); and the southeast quarter of section sixteen (16), one hundred and sixty acres (160); containing in all 1168 73–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. ten (10), eleven (11), and twelve (12), in block No. sixteen (16); lots No. ten (10), eleven (11), and twelve (12), in block No. forty-two (42); lots No. nine (9), ten (10), eleven (11), and twelve (12), in block No. forty-three (43), lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. sixty-seven (67), and all the lots in block No. sixty-six (66).

Also in the town of Nashville, lot No. eighty-six (86), and lot No. one hundred and five (105).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

114. *Share No. Fifty-four.*

Lands.

Contains, in township sixty-six (66) north, range five (5) west, the fractional northwest quarter of section ten (10), one hundred and fifty-nine 54–100 acres (159 54–100). In township sixty-six (66) north, range six (6) west; the fractional northeast quarter of section four (4), one hundred ahd sixty-one 15–100 acres (161 15–100); the west half of section ten (10), three hundred and twenty acres (320); southeast quarter of section nine (9), one hundred and sixty acres (160); west half of the southwest quarter of section eleven (11), eighty (80) acres; southeast quarter of section ten (10), one hundred and sixty acres (160); and the west half of the northeast quarter of section ten (10), eighty (80) acres; containing in all 1120 69–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. four (4), in block No. three (3); lot No. one (1), in block No. fourteen (14); lots No. one (1), two (2), and three (3), in block No. thirty-six (36); lots No. seven

(7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block No. one hundred and fifty-three (153); and all the lots in block No. one hundred and fifty-two (152).

Also in the town of Nashville, lot No. forty-one (41), and lot No. one hundred and sixty-seven (167).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and that upon Water street by the river Mississippi.

115. *Share No. Fifty-five.*

Lands.

Contains, in township sixty-six (66) north, range five (5) west, the fractional northeast quarter of section ten (10), forty-four 12–100 acres (44 12–100); the west half of the northeast quarter of section four (4), one hundred and fifty-nine 43–100 acres (159 43–100); and the east half of the northeast quarter of section five (5), eighty (80) acres. In township sixty-seven (67) north, range six (6) west, the north half of section twenty-nine (29), three hundred and twenty acres (320); and the west half of the southwest quarter of section twenty (20), eighty (80) acres. In township sixty-six (66) north, range six (6) west, the fractional northeast quarter of section one (1), one hundred and sixty-one 84–100 acres (161 84–100); east half of fractional northwest quarter of section one (1) eighty-one 25–100 acres (81 25–100); and the southeast quarter of section one hundred and sixty acres (160); containing in all 1166 64–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. eleven (11), in block No. four (4); lot No. eight (8), in block No. nine (9); lots No. ten (10), eleven (11), and twelve (12), in block No. ninety-three (93); lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. one hundred and sixty-three (160); and all the lots in block No. one hundred and sixty-two (162).

Also in the town of Nashville, lot No. thirty-four (34), and lot No. one hundred and sixty-four (164).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated. Lots

No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. one hundred and sixty-two (162), also include the whole width of Orleans street in front of them.

116. *Share No. Fifty-six.*

Lands.

Contains, in township sixty-five, 65, north, range five, 5, west, the fractional northwest quarter of section twenty-five, 25, one hundred and forty-two 6–100 acres, 142 6–100; the north fraction of the southwest quarter of section twenty-five, 25, four 63–100 acres, 4 63–100; the east half of section twenty-seven, 27, three hundred and twenty acres, 320; northeast quarter of section thirty-four, 34, one hundred and sixty acres, 160; fractional southeast quarter of section thirty-four, 34, eighty-seven 53–100 acres, 87 53–100; southwest quarter of section twenty-one, 21, one hundred and sixty acres, 160; southeast quarter of section twenty-eight, 28, one hundred and sixty acres, 160; and the fractional northeast quarter of section thirty-three, 33, one hundred and twenty-seven 11–100 acres, 127 11–100; containing in all 1162 23–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. eight, 8, in block No. *No.* thirteen, 13; lot No. eleven, 11, in block No. fifteen, 15; lots No. seven, 7, eight, 8, and nine, 9, in block No. forty-seven, 47; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, six, 6, in block No. one hundred and twenty-three, 123, and all the lots in block *in block* No. one hundred and twenty-four, 124.

Also, in the town of Nashville, lot No. sixty-three, 63, and lot No. one hundred and twenty-four, 124.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

117. *Share No. Fifty-seven.*

Lands.

Contains, in township sixty-six, 66, north, range six, 6, west, the northeast quarter of section twenty-nine, 29, one hundred and sixty acres, 160; and the west half of section twenty-two, 22, three hundred and twenty-acres, 320. In township sixty-seven, 67, north, range seven, 7, west, the fractional southwest quarter of section nine, 9, sixty-six (66) 99–100 acres, 66 99–100; northwest quarter of section sixteen, 16, one hundred and sixty acres, 160; southwest

quarter of section seventeen, 17, one hundred and sixty acres, 160; southeast quarter of section eighteen, 18, one hundred and sixty acres, 160; and the northeast quarter of section thirty-six, 36, one hundred and sixty acres, 160. Containing, in all, 1186 99–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. four, 4, five, 5, and six, 6, in block No. eighteen, 18; lots No. one, 1, two, 2, and three, 3, in block No. thirty-one, 31; lots No. one, 1, two, 2, three, 3, and four, 4, in block No. thirty-five, 35; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. thirty-three, 33; and all the lots in block No. thirty-four, 34. Also, in the town of Nashville, lot No. one hundred and fourteen, 114, and lot No. two hundred and seven, 207.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and the lots upon Water street also include all the land in front of them to the Mississippi river.

118. *Share No. Fifty-eight.*

Lands.

Contains, in township sixty-seven, 67, north, range five, 5, west, the fractional northeast quarter of section nine, 9, one hundred and thirty-six 44–100 acres, 136 44–100; the southwest quarter of section ten, 10, one hundred and sixty acres, 160; the northeast quarter of section twenty-eight, 28, one hundred and sixty acres, 160; and the east half of the northwest quarter of section twenty-eight, 28, eighty, 80, acres. In township sixty-seven, 67, north, range six, 6, west, the south half of section twenty-eight, 28, three hundred and twenty acres, 320; the northwest quarter of section twenty-eight, 28, one hundred and sixty acres, 160; and the southwest quarter of section twenty-nine, 29, one hundred and sixty acres, 160. Containing, in all, 1176 44–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. one, 1, in block No. four, 4; lot No. ten, 10, in block No. ten, 10; lots No. four, 4, five, 5, and six, 6, in block No. twenty-seven, 27; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and seventy-seven, 177.

Also, in the town of Nashville, lot No. twenty-one, 21, and lot No. one hundred and fifty-one, 151.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated. Lot No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and seventy-seven, 177, and lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and seventy-eight, 178, also include the whole width of Cedar street in front of them, and the lot upon Water street includes all the land in front of it to the Mississippi river.

119. *Share No. Fifty-nine.*

Lands.

Contains, in township sixty-six, 66, north, range six, 6, west, the fractional west half of the southeast quarter of section thirty-two, 32, sixty-eight 86–100 acres, 68 86–100; fractional southwest quarter of section thirty-two, 32, nineteen 75–100 acres, 19 75–100; the north half of section twenty-six, 26, three hundred and twenty acres, 320; and the northeast quarter of section twenty-seven, 27, one hundred and sixty acres, 160. In township sixty-six, 66, north, range seven, 7, west, the fractional north half of section thirteen, 13, two hundred and seventy-eight 24–100 acres, 278 24–100. In township sixty-seven, 67, north, range seven, 7, west, the south half of section twenty-two, 22, three hundred and twenty acres, 320. Containing, in all, 1166 85–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. three, 3, and four, 4, in block No. seventeen, 17; lots No. four, 4, five, 5, and six, 6, in block No. thirty, 30; lots No. five, 5, six, 6, seven, 7, and eight, 8, in block No. eighty-two, 82; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. sixty-two, 62; and all the lots in block No. sixty-one, 61.

Also, in the town of Nashville, lot No. eighty-eight, 88, and lot No. one hundred and seven, 107.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street also include all the land in front of them to the Mississippi river.

120. *Share No. Sixty.*

Lands.

Contains, in township sixty-seven, 67, north, range five, 5, west, the fractional west half of section thirteen, 13, three hundred and eighteen 74–100 acres, 318 74–100; fractional southeast quarter of section thirteen, 13, eleven 20–100 acres, 11 20–100; and the southeast quarter of section fourteen, 14, one hundred and sixty acres, 160. In township sixty-seven, 67, north, range six, 6, west, the whole of section thirty-two, 32, six hundred and forty acres, 640. Containing, in all, 1129 94–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. two, 2, in block No. six, 6; lot No. eleven, 11, in block No. eleven, 11; lots No. seven, 7, eight, 8, and nine, 9, in block No. sixty-four, 64; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and ninety-three, 193; and all the lots in block No. one hundred and ninety-four, 194.

Also in the town of Nashville, lot No. thirteen, 13, lot No. one hundred and twenty-eight, 128, and lot No. one hundred and forty-three, 143.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated. Lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and ninety-three, 193; and lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, and seven, 7, in block No. one hundred and ninety-four, 194; also the whole width of Orleans street and Fourteenth street in front of and opposite to them. The lot upon Water street includes all the land in front of it to the Mississippi river.

121. *Share No. Sixty-one.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the northeast quarter of section twenty-five, 25, one hundred and sixty acres, 160; in township sixty-seven, 67, north, range seven, 7, west, the fractional southeast quarter of section twelve, 12, one hundred and thirty-two 87–100 acres, 132 87–100; northeast quarter of section thirteen, 13, one hundred and sixty acres, 160; and the east half of section twenty-five, 25, three hundred and twenty acres, 320; in township sixty-six, 66, north, range six, 6, west, the southwest

quarter of section twenty-five, 25, one hundred and sixty acres, 160; the west half of the northwest quarter of section twenty-five, 25, eighty acres, 80; and the northwest quarter of section thirty-six, 36, one hundred and sixty acres, 160; containing in all 1172 87–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. seven, 7, eight, 8, nine, 9, and ten, 10, in block No. fifty-four, 54; lots No. nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. twenty-five, 25; lots No. one, 1, two, 2, and three, 3, in block No. fifty, 50; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. ninety-eight, 98; and all the lots in block No. ninety-nine, 99.

Also in the town of Nashville, lot No. ninety-one, 91, and lot No. two hundred and eight, 208.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block ninety-nine, 99, include also the whole width of Orleans street in front of them.

122. *Share No. Sixty-two.*

Lands.

Contains, in township sixty-seven, 67, north, range five, 5, west, the west half of section twenty-three, 23, three hundred and twenty acres, 320; southeast quarter of section thirty, 30, one hundred and sixty acres, 160; and the fractional southwest quarter of section thirty, 30, one hundred and fifty-seven 44–100 acres, 157 44–100; in township sixty-seven, 67, north, range six, 6, west, the east half of the northwest quarter of section twenty-five, 25, eighty, 80, acres; and the southwest quarter of section twenty-five, 25, one hundred and sixty acres, 160; containing in all 1197 44–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. six, 6, in block No. four, 4; lot No. three, 3, in block No. nine, 9; lots No. seven, 7, eight, 8, and nine, 9, in block No. one hundred and seven, 107; lots seven, 7, eight, 8, hine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and sixty-nine, 169; and all the lots in block No. one hundred and seventy, 170.

Also in the town of Nashville, lot No. twenty-seven, 27, and lot No. one hundred and fifty-seven, 157.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and the lot upon Water street also includes all the land in front of it to the Mississippi river.

123. *Share No. Sixty-three.*

Lands.

Contains, in township sixty-six north, range five, 5, west, the west half of the northwest quarter of section nine, 9, eighty, 80, acres; northeast quarter of section eight, 8, one hundred and sixty acres, 160; in township sixty-six, 66, north, range six, 6, west, the south half of section two, 2, three hundred and twenty acres, 320; southeast quarter of section three, 3, one hundred and sixty acres, 160; south half of section five, 5, three hundred and twenty acres, 320; east half of the northwest quarter of section fifteen, 15, eighty, 80, acres; and the west half of the northeast quarter of section fifteen, 15, eighty, 80, acres; containing in all 1200 acres.

Town Lots.

Also in the town of Keokuk, lot No. six, 6, in block No. three, 3; lot No. three, 3, in block No. fourteen, 14; lots No. seven, 7, eight, 8, and nine, 9, in block No. thirty-six, 36; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and fifty-six, 156; and all the lots in block No. one hundred and fifty-five, 155.

Also in the town of Nashville, lot No. forty-three, 43, and lot No. one hundred and sixty-nine, 169.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and the lots upon Water street also include all the land in front of them to the Mississippi river.

124. *Share No. Sixty-four.*

Lands.

Contains in township sixty-seven, 67, north, range five, 5, west, the southeast quarter of section nine, 9, one hundred and sixty acres, 160; northwest quarter of section twenty-one, 21, one hundred and sixty acres, 160; and the east half of the northeast quarter of section twenty, 20, eighty, 80, acres. In township sixty-seven, 67,

north, range six, 6, west, the fractional northwest quarter of section nineteen, 19, one hundred and thirty and 1–100 acres, 130 1–100; southwest quarter of section nineteen, 19, one hundred and sixty acres, 160; southeast quarter of section fifteen, 15, one hundred and sixty acres, 160; and southwest quarter of section fifteen, 15, one hundred and sixty acres, 160; and the northwest quarter of section twenty-two, 22, one hundred and sixty acres, 160; containing in all 1170 and 1–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. three, 3, in block No. seven, 7; lot No. six, 6, in block No. ten, 10; lots No. four, 4, five, 5, and six, 6, in block No. twenty-eight, 28; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and eighty-four, 184; and all the lots in No. one hundred and eighty-three, 183.

Also, in the town of Nashville, lot No. eighteen, 18; and lot No. one hundred and forty-eight, 148.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and those upon Water street also include all the land in front of them, to the Mississippi river.

125. *Share No. Sixty-five.*

Lands.

Contains, in township sixty-six, 66, north, range six, 6, west, the northwest quarter of section twenty-eight, 28, one hundred and sixty acres, 160; northeast quarter of section twenty-two, 22, one hundred and sixty acres, 160; northwest quarter of section twenty-three, 23, one hundred and sixty acres, 160; and the south half of section thirteen, 13, three hundred and twenty acres, 320. In township sixty-seven, 67, north, range seven, 7, west, fractional southwest quarter of section seven, 7, twenty-eight and 41–100 acres, 28 41–100; fractional northwest quarter of section eighteen, 18, one hundred and eighty-four and 20–100 acres, 184 20–100; and the southeast quarter of section twenty, 20, one hundred and sixty acres, 160; containing in all 1172 and 61–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. seven, 7, eight, 8, and nine, 9, in block No. eighteen, 18; lots No. four, 4, five, 5, and six, 6,

in block No. thirty-one, 31; lots No. five, 5, six, 6, seven, 7, and eight, 8, in block No. thirty-five; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. thirty-three, 33; and all the lots in block No. seventy-eight, 78.

Also, in the town of Nashville, lot No. one hundred and fifteen, 115; and lot No. two hundred and ten, 210.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and the lot upon Water street includes also all the land in front of it, to the Mississippi river.

126. *Share No. Sixty-six.*

Lands.

Contains in township sixty-six, 66, north, range five, 5, west, the fractional northwest quarter of section fifteen, 15, one hundred and fifty-eight and 2–100 acres, 158 2–100; the north half of section thirty-two, 32, three hundred and twenty acres, 320; north half of section thirty-three, 33, three hundred and twenty acres, 320; the west half of the northwest quarter of section thirty-one, 31, eighty-one and 16–100 acres, 81 16–100; and the west half of the northwest quarter of section thirty-four, 34, eighty, 80, acres. In township sixty-six, 66, north, range six, 6, west, the northeast quarter of section thirty-six, 36, one hundred and sixty acres, 160. Containing in all 1119 and 18–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. seven, 7, in block No. twelve, 12; lot No. ten, 10, in block No. fourteen, 14; lots No. four, 4, five, 5, and six, 6, in block No. twenty-six, 26; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and forty-five, 145; and all the lots in block No. one hundred and forty-four, 144.

Also, in the town of Nashville, lot No. fifty, 50; and lot No. one hundred and seventy-six, 176.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and the lots upon Water street also include all the land in front of them, to the Mississippi river.

127. *Share No. Sixty-seven.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the southeast quarter of section five, 5, one hundred and sixty acres, 160. In township sixty-six, 66, north, range six, 6, west, the south half of section four, 4, three hundred and twenty acres, 320; the north half of section nine, 9, three hundred and twenty acres, 320; fractional northwest quarter of section four, 4, one hundred and sixty-two and 97–100 acres, 162 97–100; and the southeast quarter of section twelve, 12, one hundred and sixty acres, 160. Containing in all 1122 and 98–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. three, 3, in block No. three, 3; lot No. twelve, 12, in block No. nine, 9; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. sixty-five, 65; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and fifty-one, 151; and the whole of Arch square classed as a block of twelve, 12, lots.

Also in the town of Nashville, lot No. forty, 40, and lot No. one hundred and sixty-six, 166.

Boundaries.

All the town lots, each square included in the above share, are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street include, also, all the land in front of them to the Mississippi river.

128. *Share No. Sixty-eight.*

Lands.

Contains, in township sixty-five, 65, north, range five, 5, west, the fractional southwest quarter of section one, 1, one hundred and fifty-nine 92–100 acres, 159 92–100; fractional southeast quarter of section one, 1, seventeen 53–100 acres, 17 53–100; and the northwest quarter of section twenty-one, 21, one hundred and sixty acres, 160. In township sixty-five, 65, north, range six, 6, west, the north half of section twenty four, 24, three hundred and twenty acres, 320; northeast quarter of section twenty-three, 23, one hundred and sixty acres, 160; fractional southeast quarter of section twenty-three, 23, one hundred and thirty-eight 10–100 acres, 138 10–100; fractional southwest quarter of section twenty-three, 23, twenty-two, 22, 49–100 acres, 22 49–100; fractional northwest

quarter of section twenty-three, 23, sixty-three 82–100 acres, 63 82–100; and the northeast quarter of section two, 2, one hundred and sixty acres, 160; containing in all, 1201 86–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. ten, 10, eleven, 11, and twelve, 12, in block No. seven, 7; lots No. three, 3, four, 4, and five, 5, in block No. twenty-one, 21; lots No. one, 1, two, 2, three, 3, and four, 4, in block No. twenty-three, 23; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and eight, 108; and all the lots in block No. one hundred and five, 105.

Also in the town of Nashville, lot No. seventy-seven, 77, and lot No. two hundred and three, 203.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

129. *Share No. Sixty-nine.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the west half of the southwest quarter of section nine, 9, eighty acres, 80; southwest quarter of section eight, 8, one hundred and sixty acres, 160; the south half of section twenty-nine, 29, three hundred and twenty acres, 320; the east half of the southeast quarter of section thirty, 30, eighty acres, 80; the south half of section twenty-eight, 28, three hundred and twenty acres, 320; and the west half of the southwest quarter of section thirty, 30, eighty acres, 80. In township sixty-six, 66, north, range six, 6, west, the southeast quarter of section twenty-five, 25, one hundred and sixty acres, 160; containing in all, 1200 acres.

Town Lots.

Also in the town of Keokuk, lot No. six, 6, in block No. twelve, 12; lot No. nine, 9, in block No. fourteen, 14; lots No. one, 1, two, 2, and three, in block No. twenty-six, 26; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and forty-five, 145; and all the lots in block No. one hundred and forty-six, 146.

Also in the town of Nashville, lot No. forty-nine, 49, and lot No. one hundred and seventy-five, 175.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated. Lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and forty-six, 146, also, include the whole width of Cedar street in front of them, and the lot upon Water street includes all the land in front of it to the Mississippi river.

130. *Share No. Seventy.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the fractional northeast quarter, of section fifteen, 15, seventy-nine 84–100 acres, 79 84–100; northeast quarter of section seventeen, 17, one hundred and sixty acres, 160; northwest quarter of section seventeen, 17, one hundred and sixty acres, 160; the fractional north half of section nineteen, 19, three hundred and eighteen 84–100 acres, 318 84–100; the east half of the northwest quarter of section thirty-one, 31, eighty acres, 80; the northeast quarter of section thirty-one, 31, one hundred and sixty acres, 160; the southwest quarter of section thirty-one, 31, one hundred and sixty 4–100 acres, 160 4–100; and the west half of the southeast quarter of section thirty-one, 31, eighty acres, 80; containing in all, 1198 72–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. eleven, 11, in block No. fourteen, 14; lot No. eight, 8, in block No. twelve, 12; lots No. seven, 7, eight, 8, and nine, 9, in block No. twenty-six, 26; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and forty-two, 142; and all the lots in block No. one hundred and forty-three, 143.

Also in the town of Nashville, lot No. fifty-one, 51, and lot No. one hundred and seventy-seven, 177.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

131. *Share No. Seventy-one.*

Lands.

Contains, in township sixty-six, 66, north, range five 5, west, the fractional northeast quarter of section three, 3, one hundred and

one 70–100 acres, 101 70–100; fractional northwest quarter of section three, 3, one hundred and sixty 36–100 acres, 160 36–100; and the east half of the northeast quarter of section four, 4, eighty acres, 80. In township sixty-seven, 67, north, range five, 5, west, the north half of section twenty-nine, 29, three hundred and twenty acres, 320; the fractional west half of section thirty-one, 31, three hundred and nineteen 43–100 acres, 319 43–100; and the northeast quarter of section thirty-one, 31, one hundred and sixty acres, 160; containing in all, 1141 49--100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. seven, 7, in block No. four, 4; lot No. four, 4, in block No. nine, 9; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and seven, 107; lots seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. seventy-nine, 79; and all the lots in block No. eighty, 80.

Also, in the town of Nashville, lot No. twenty-eight, 28, and lot No. one hundred and fifty-eight, 158.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

132. *Share No. Seventy-two.*

Lands.

Contains, in township sixty-five, 65, north, range five, 5, west, fractional northeast quarter of section thirteen, 13, twelve 45–100 acres, 12 45–100; fractional northwest quarter of section thirteen, 13, one hundred and fifty-four 36–100 acres, 154 36–100; the west half of section twenty-six, 26, three hundred and twenty acres, 320; southwest quarter of section twenty-three, 23, one hundred and sixty acres, 160; fractional northwest quarter of section thirty-five, 35, one hundred and fifty-nine 71–100 acres, 159 71–100; and the fractional southwest quarter of section thirty-five, 35, twenty-four, 24 43–100 acres, 24 43–100; in township sixty-six, 66, north, range six, 6, west, the west half of section twenty-one, 21, three hundred and twenty acres, 320; containing in all 1150 95–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. seven, 7, eight, 8, and nine, 9, in block No. six, 6; lots No. one, 1, two, 2, and twelve, 12,

in block No. twenty-one, 21; lots No. one, 1, two, 2, three, 3, and four, 4, in block No. twenty-two, 22; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and eleven, 111; and all the lots in block No. one hundred and twelve, 112.

Also, in the town of Nashville, lot No. seventy-two, 72, and lot No. two hundred, 200.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

133. *Share No. Seventy-three.*

Lands.

Contains, in township sixty-six, 66, north, range seven, 7, west, the fractional northwest quarter of section twelve, 12, ninety-seven 13–100 acres, 97 13–100; the northeast quarter of section twelve, 12, one hundred and sixty acres, 160; fractional northwest quarter of section three, 3, one hundred and one 67–100 acres, 101 67–100; in township sixty-seven, 67, north, range seven, 7, west, the southwest quarter of section thirty-four, 34, one hundred and sixty acres, 160; fractional northwest quarter of section thirty-two, 32, forty-five 90–100 acres, 45 90–100; the northeast quarter of section thirty-two, 32, one hundred and sixty acres, 160; the north half of section thirty-three, 33, three hundred and twenty acres, 320; and the northwest quarter of section twenty, 20, one hundred and sixty acres, 160; containing in all 1204 70–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. one, 1, two, 2, three, 3, four, 4, and five, 5, in block No. eighty-four, 84; lot No. nine, 9, in block No. fifty-seven, 57; lots ten, 10, eleven, 11, and twelve, 12, in block No. thirty-eight, 38; lots one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and sixty-nine, 169; lots three, 3, and four, 4, in block No. fifty-five, 55; and all the lots in block No. one hundred and sixty-eight, 168.

Also, in the town of Nashville, lot No. sixty-six, 66, and lot No. one hundred and ninety-four, 194.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated. Lots No. three, 3, and four, 4, in block No. fifty-five, 55, include all the

land in front of them, and parallel with the middle of Third street, to the Mississippi river. All of the other lots upon Water street include all the land in front of them to the Mississippi river.

134. *Share No. Seventy-four.*

Lands.

Contains, in township sixty-five, 65, range five west, the northwest quarter of section twenty-four, 24, one hundred and sixty acres, 160; the north half of section twenty-three, 23, three hundred and twenty acres, 320; the northeast quarter of section twenty-eight, 28, one hundred and sixty acres, 160; the northwest quarter of section twenty-eight, 28, one hundred and sixty acres, 160; and the east half of the southeast quarter of section twenty-one, 21, eighty, 80, acres; in township sixty-six, 66, north, range six, 6, west, the east half of section twenty-one, 21, three hundred and twenty acres, 320; containing in all 1200 acres.

Town Lots.

Also, in the town of Keokuk, lot No. eight, 8, in block No. five, 5; lot No. eight, 8, in block No. three, 3; lots No. one, 1, two, 2, and three, 3, in block No. forty-five, 45; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and fourteen, 114; and all the lots in block No. one hundred and fifteen, 115.

Also, in the town of Nashville, lot No. seventy, 70, and lot No. one hundred and ninety-eight, 198.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and fifteen, 115, also include the whole width of Cedar street in front of them.

135. *Share No. Seventy-five.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the fractional southeast quarter of section eleven, 11, one hundred and thirty 86–100 acres, 130 86–100; fractional southwest quarter of section twelve, 12, sixty-nine 13–100 acres—69 13–100; the north half of section twenty-two, 22, three hundred and twenty acres, 320; and the northwest quarter of section twenty-three, 23, one

hundred and sixty acres, 160; in township sixty-six, 66, north, range six, 6, west, the east half of the northeast quarter of section fifteen, 15, eighty acres, 80; the northwest quarter of section fourteen, 14, one hundred and sixty acres, 160; southeast quarter of section thirty-six, 36, one hundred and sixty acres, 160; and the east half of the southwest quarter of section thirty-six, 36, eighty acres, 80; containing in all 1159 99–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. nine, 9, in block No. twelve, 12; lot No. twelve, 12, in block No. fourteen, 14; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. twenty-six, 26; lots one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and forty-two, 142; and all the lots in block No. one hundred and forty-one, 141.

Also in the town of Nashville, lot No. fifty-two, 52, and lot No. one hundred and seventy-eight, 178.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

136. *Share No. Seventy-six.*

Lands.

Contains, in township sixty-seven, 67, north, range four, 4, west, the northeast quarter of section seven, 7, one hundred and sixty acres, 160; fractional southeast quarter of section six, 6, sixty and 32–100 acres, 60 32–100. In township sixty-seven, 67, north, range six, 6, west; the south half of section fourteen, 14, three hundred and twenty acres, 320; and the northeast quarter of section twenty-three, 23, one hundred and sixty acres, 160. In township sixty-seven, 67, north, range five, 5, west, the fractional northwest quarter of section nineteen, 19, one hundred and fifty-eight 38–100 acres, 158 38–100; and the northeast quarter of section nineteen, 19, one hundred and sixty acres, 160. In township sixty-four, 64, north, range five, 5, west, the whole of fractional section four, 4, one hundred and fourteen 69–100 acres, 114 69–100. Containing in all 1133 89–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. five, 5, in block No. five, 5; lot No. five, 5, in block No. eleven, 11; lots No. one, 1, two, 2, and three, 3, in block No. ninety-four, 94; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. two hun-

dred and two, 202; and all the lots in block No. two hundred and three, 203.

Also in the town of Nashville, lot No. five, 5, and lot No. one hundred and twenty, 120.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated. Lot No. seven, 7, in block No. two hundred and two, 202, and lots six, 6, and seven, 7, in block No. two hundred and three, 203, also include the whole width of Fourteenth street opposite to them; and those upon Water street include all the land in front of them to the Mississippi river.

137. *Share No. Seventy-seven.*

Lands.

Contains, in township sixty-six, 66, north, range six, 6, west, the fractional south half of section six, 6, two hundred and seventy-seven 76–100 acres, 277 76–100. In township sixty-six, 66, north, range five, 5, west, the fractional northwest quarter of section five, 5, one hundred and fifty-nine 78–100 acres, 159 78–100; the west half of the northeast quarter of section five, 5, eighty, 80 acres. In township sixty-seven, 67, north, range five, 5, west, the southwest quarter of section thirty-two, 32, one hundred and sixty acres, 160; the southeast quarter of section thirty-two, 32, one hundred and sixty acres, 160; the southwest quarter of section thirty-three, 33, one hundred and sixty acres, 160; and the northwest quarter of section thirty-three, 33, one hundred and sixty acres, 160; containing in all 1157 54–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. nine, 9, in block No. four, 4; lot No. six, 6, in block No. nine, 9; lots No. four, 4, five, 5, and six, 6, in block No. one hundred and sixty-six, 166; and all the lots in block No. one hundred and sixty-five, 165.

Also in the town of Nashville, lot No. thirty-two, 32, and lot No. one hundred and sixty, 160.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

138. *Share No. Seventy-eight.*

Lands.

Contains, in township sixty-five, 65, north, range five, 5, west, the

west half of the southeast quarter of section twenty-four, 24, eighty acres, 80; the west fraction of the northeast quarter of section twenty-five, 25, twenty-five 5–100 acres, 25 5–100; southwest quarter of section twenty-four, 24, one hundred and sixty acres, 160; the west half of section twenty-seven, 27, three hundred and twenty acres, 320; the fractional west half of section thirty-four, 34, two hundred and eighty-one 6–100 acres, 281 6–100; the north half of section sixteen, 16, three hundred and twenty acres, 320; the fractional southeast quarter of section thirty-three, 33, ten 6–100 acres, 10 6–100. In township sixty-four, 64, north, range five, 5, west, the fractional northwest quarter of section three, 3, thirty-nine 21–100 acres, 39 21–100; containing in all 1235 38–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. seven, 7, in block No. thirteen, 13; lot No. ten, 10, in block No. fifteen, 15; lots No. four, 4, five, 5, and six, 6, in block No. forty-seven, 47; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and twenty-six, 126; and all the lots in block No. one hundred and twenty-five, 125.

Also in the town of Nashville, lot No. sixty-two, 62, and lot No. one hundred and ninety, 190.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and the lot upon Water street also includes all the land in front of it to the Mississippi river.

139. *Share No. Seventy-nine.*

Lands.

Contains, in township sixty-seven, 67, north, range five, 5, west, the fractional northeast quarter of section eight, 8, one hundred and fifteen 38–100 acres, 115 38–100; fractional northwest quarter of section eight, 8, one hundred and six 78–100 acres, 106 78–100; southeast quarter of section eight, 8, one hundred and sixty acres, 160; the southwest quarter of section eight, 8, one hundred and sixty acres, 160; fractional northeast quarter of section seven, 7, ninety-seven 80–100 acres, 97 80–100; northeast quarter of section seventeen, 17, one hundred and sixty acres, 160; northwest quarter of section seventeen, 17, one hundred and sixty acres, 160; southeast quarter of section seventeen, 17, one hundred and sixty acres, 160. Also in township sixty-seven, 67, north, range four, 4, west, the frac-

tional southeast quarter of section four, 4, thirty-four (34) 7–100 acres, 34 7–100; containing in all 1154 3–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. one, 1, in block No. five, 5; lot No. one, 1, in block No. eleven, 11; lots No. one, 1, two, 2, and three, 3, in block No. one hundred and six, 106; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. two hundred and eight, 208; and all the lots in block No. two hundred and nine, 209.

Also in the town of Nashville, lot No. one, 1, and lot No. one hundred and thirty-nine, 139.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon they are situated. Lot No. seven, 7, in block No. two hundred and eight, 208, lots seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. two hundred and nine, 209, include also the whole width of Cedar street and Fourteenth street, in front of and opposite to them, and those upon Water street also include all the land in front of them to the Mississippi river.

140. *Share No. Eighty.*

Lands.

Contains, in township sixty-seven, 67, north, range five, 5, west, the west half of section fourteen, 14, three hundred and twenty acres, 320; and the east half of section fifteen, 15, three hundred and twenty acres, 320. In township sixty-seven, 67, north, range six, 6, west, the south half of section sixteen, 16, three hundred and twenty acres, 320; and the northwest quarter of section seventeen, 17, one hundred and sixty acres, 160; containing in all, 1120 acres.

Town Lots.

Also in the town of Keokuk, lot No. six, 6, in block No. six, 6; lot No. three, 3, in block No. ten, 10; lots No. seven, 7, eight, 8, and nine, 9, in block No. thirty-seven, 37; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and eighty-seven, 187; and all the lots in block No. one hundred and eighty-eight, 188.

Also in the town of Nashville, lot No. fifteen, 15, and lot No. one hundred and forty-five, 145.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street include also all the land in front of them to the Mississippi river.

141. *Share No. Eighty-one.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the fractional southeast quarter of section thirteen, 13, one hundred and twenty-one 89–100 acres, 121 89–100; east half of the southeast quarter of section fifteen, 15, eighty, 80, acres; south half of section thirty-three, 33, three hundred and twenty acres, 320; and the southeast quarter of section thirty-two, 32, one hundred and sixty acres, 160. In township sixty-five, 65, north, range five, 5, west, the south half of section four, 4, three hundred and twenty acres, 320; east half of the southeast quarter of section five, 5, eighty acres, 80; and the west half of the southwest quarter of section three, 3, eighty acres, 80; containing in all 1161 89–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. twelve, 12, in block No. twelve, 12; lot No. three, 3, in block No. fifteen, 15; lots No. seven, 7, eight, 8, and nine, 9, in block No. forty-nine, 49; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and thirty-seven, 137; and Fayette Square, classed as a block of twelve lots, 12.

Also in the town of Nashville, lot No. fifty-five, 55, and lot No. one hundred and eighty-one, 181.

Boundaries.

All the town lots, and Fayette Square, included in the above share, are bounded by the middle of the streets and alleys upon which they are situated. The lot upon Water street also includes all the land in front of it to the Mississippi river.

142. *Share No. Eighty-two.*

Lands.

In township sixty-seven, 67, north, range *range* five, 5, west, the west half of the northwest quarter of section thirty-two, 32, eighty acres, 80; the south half of section twenty-nine, 29, three hundred and twenty acres, 320; and the southeast quarter of section thirty-

one, 31, one hundred and sixty acres, 160. In township sixty-six, 66, north, range six, 6, west, the fractional north half of section six, 6, two hundred and eighty-one 32–100 acres, 281 32–100; and the fractional northwest quarter of section five, 5, one hundred and sixty-one 88–100 acres, 161 88–100. In township sixty-six, 66, north, range five, 5, west, the fractional northeast quarter of section six, 6, one hundred and sixty-one, 24–100 acres, 161 24–100; containing in all 1164 44–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. eight, 8, in block No. four, 4; lot No. five, 5, in block No. nine, 9; lots No. one, 1, two, 2, and three, 3, in block No. ninety-three, 93; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and sixty-six, 166.

Also, in the town of Nashville, lot No. thirty-one, 31, and lot No. one hundred and fifty-nine, 159.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

Share No. Eighty-three.

Lands.

Contains, in township sixty-five, 65, range five, 5, west, the fractional southwest quarter of section twelve, 12, one hundred and thirty-six 12–100 acres, 136 12–100; and the south half of section eleven, 11, three hundred and twenty acres, 320; in township sixty-six, 66, north, range six, 6, west, the southeast quarter of section thirty-five, 35, one hundred and sixty acres, 160; the west half of the southwest quarter of section thirty-six, 36, eighty acres, 80; the southeast quarter of section thirty-four, 34, one hundred and sixty acres, 160; the southwest quarter of section seventeen, 17, one hundred and sixty acres, 160; and the northwest quarter of section twenty, 20, one hundred and sixty acres, 160; containing in all 1176 12–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. ten, 10, eleven, 11, and twelve, 12, in block No. six, 6; lots No. nine, 9, ten, 10, and eleven, 11, in block No. twenty-one, 21; lots five, 5, six, 6, seven, 7, and eight, 8, in block No. twenty-two, 22; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and eleven, 111; and all the lots in block No. one hundred and ten, 110.

Also, in the town of Nashville, lot No. seventy-five, 75, and lot two hundred and one, 201.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

143. *Share No. Eighty-three.*

Lands.

Contains, in township sixty-five, 65, north, range five, 5, west, fractional southwest quarter of section twelve, 12, one hundred and thirty-six 12–100 acres, 136 12–100; and the south half of section eleven, 11, three hundred and twenty acres, 320; in township sixty-six, 66, north, range six, 6, west, the southeast quarter of section thirty-five, 35, one hundred and sixty acres, 160; the west half of the southwest quarter of section thirty-six, 36, eighty acres, 80; the southeast quarter of section thirty-four, 34, one hundred and sixty acres, 160; the southwest quarter of section seventeen, 17, one hundred and sixty acres, 160; and the northwest quarter of section twenty, 20, one hundred and sixty acres, 160; containing in all 1176 12–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. ten, 10, eleven, 11, and twelve, 12, in block No. six, 6; lots No. nine, 9, ten, 10, and eleven, 11, in block No. twenty-one, 21; lots five, 5, six, 6, seven, 7, and eight, 8, in block No. twenty-two, 22; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and eleven, 111; and all the lots in block No. one hundred and ten, 110.

Also, in the town of Nashville, lot No. seventy-five, 75, and lot No. two hundred and one, 201.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

144. *Share No. Eighty-four.*

Lands.

Contains, in township sixty-five, 65, north, range five, 5, west, the east (quarter) half of the northeast quarter of section twenty-six, 26, eighty acres, 80; fractional southeast quarter of section twenty-six, 26, one hundred and fifty-three 25–100, 153 25–100, acres;

north half of section fourteen, 14, three hundred and twenty acres, 320; and the fractional north half of section nineteen, 19, three hundred and seventeen 36–100 acres, 317 36–100; in township sixty-five, 65, north, range six, 6, west, the fractional south half of section twenty-four, 24, three hundred and six 16–100 acres, 306 16–100; and the whole of fractional section twenty-five, 25, one hundred and ninety-one, 8–100 acres, 191 8–100; containing in all 1367 85–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. nine, 9, in block No. thirteen, 13; lot No. twelve, 12, in block No. fifteen, 15; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. forty-seven, 47; lots No. ten, 10, eleven, 11, seven, 7, eight, 8, nine, 9, and twelve, 12, in block No. one hundred and twenty-three, 123; and all the lots in block No. one hundred and twenty-two, 122.

Also, in the town of Nashville, lot No. sixty-four (64), and lot No. one hundred and ninety-two (192).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

145. *Share No. Eighty-five.*

Lands.

Contains, in township sixty-six (66) north, range six (6) west, the east half of the southeast quarter of section thirty-two (32), eighty acres (80); the northwest quarter of section thirty-four (34), one hundred and sixty acres (160); the northeast quarter of section thirty-four (34), one hundred and sixty acres (160); and the north half of section thirty-five (35), three hundred and twenty acres (320); in township sixty-six (66) north, range seven (7) west, the fractional northwest quarter of section four (4), fifty-three 9–100 acres (53 9–100); in township sixty-seven (67) north, range seven (7) west, the southwest quarter of section thirty-three (33), one hundred and sixty acres (160); the fractional southeast quarter of section nine (9), seventy-four 30–100 acres (74 30–100); and the northeast quarter of section sixteen (16), one hundred and sixty acres (160); containing in all 1167 39–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. five, 5, and six, 6, in block No. seventeen, 17; lots No. one, 1, two, 2, and three, 3, in block

No. thirty, 30; lots No. one, 1, two, 2, three, 3, and four, 4, in block No. *block No.* eighty-two, 82; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. sixty-two, 62; and all the lots in block No. sixty-three, 63.

Also in the town of Nashville, lot No. eighty-seven, 87, and lot No. one hundred and six, 106.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and those upon Water street also include all the land in front of them to the Mississippi river.

146. *Share No. Eighty-six.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the fractional east half of the northeast quarter of section twenty-four, 24, seventy-nine 84–100 acres, 79 84–100; east half of the southeast quarter of section fourteen, 14, eighty acres, 80; the northeast quarter of section twenty-three, 23, one hundred and sixty acres, 160; and the fractional northwest quarter of section eighteen, 18, one hundred and fifty-eight 36–100 acres, 158 36–100; in township sixty-five, 65, north, range six, 6, west, the fractional southwest quarter of section 14, fourteen, fifty-two 70–100 acres, 52 70–100; fractional southeast quarter of section fourteen, 14, one hundred and fifty-nine 50–100 acres, 159 50–100; and the south half of section thirteen, 13, three hundred and twenty acres, 320; in township sixty-five, 65, north, range five, 5, west, the fractional southwest quarter of section eighteen, 18, one hundred and fifty-seven 44–100 acres, 157 44–100; containing in all 1167 84–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. two, 2, three, 3, and four, 4, in block No. eight, 8; lots No. five, 5, six, 6, seven, 7, and eight, 8, in block No. twenty-three, 23; lots No. one, 1, two, 2, and three, 3, in block No. twenty-four, 24; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and three, 103; and all the lots in block No. one hundred and four, 104.

Also in the town of Nashville, lot No. seventy-eight, 78, and lot No. two hundred and four, 204.

Boundaries.

All the town lots included in the above share are bounded by the

middle of the streets and alleys upon which they are situated; and those upon Water street also include all the land in front of them to the Mississippi river.

147. *Share No. Eighty-seven.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the fractional northeast quarter of section thirteen, 13, forty-three 6–100 acres, 43 6–100; fractional northwest quarter of section thirteen, 13, one hundred and fifty-nine 21–100 acres, 159 21–100; north half of section twenty-one, 21, three hundred and twenty acres, 320; northeast quarter of section twenty, 20, one hundred and sixty acres, 160; fractional south half of section nineteen, 19, three hundred and nineteen 88–100 acres, 319 88–100; west half of the southeast quarter of section fourteen, 14, eighty acres, 80; and the east half of the southwest quarter of section fourteen, 14, eighty acres, 80; containing in all 1162 15–100 acres.

Town Lots.

Also in the town of Keokuk, lot ten, 10, in block No. twelve, 12; lot No. one, 1, in block No. fifteen, 15; lots No. one, 1, two, 2, and three, 3, in block No. forty-nine, 49; and lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and thirty-nine, 139; and all the lots in block No. one hundred and forty, 140.

Also in the town of Nashville, lot No. fifty-three, 53, and lot No. one hundred and seventy-nine, 179.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

148. *Share No. Eighty-eight.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the east half of the southwest quarter of section nine, 9, eighty acres, 80; northwest quarter of section sixteen, 16, one hundred and sixty acres, 160; the south half of section twenty-one, 21, three hundred and twenty acres, 320; northeast quarter of section twenty-nine, 29, one hundred and sixty acres, 160; the north half of section thirty, 30, three hundred and twenty 24–100 acres, 320 24–100; the west half of the southeast quarter of section thirty, 30, eighty acres, 80;

and the east half of the southwest quarter of section thirty, 30, eighty acres, 80; containing in all 1200 24–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. five, 5, in block No. twelve, 12; lot No. eight, 8, in block No. fourteen, 14; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. twenty-nine, 29; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and thirty-two, 132; and all the lots in block No. one hundred and thirty-three, 133.

Also in the town of Nashville, lot No. forty-eight, 48; and lot No. one hundred and seventy-four, 174.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and the lot upon Water street also includes all the land in front of it to the Mississippi river.

149. *Share No. Eighty-nine.*

Lands.

Contains, in township sixty-six, 66, north, range six, 6, west, the west half of the southeast quarter of section thirty-three, 33, eighty acres, 80; the southwest quarter of section twenty-seven, 27, one hundred and sixty acres, 160. In township sixty-five, 65, north, range six, 6, west, the fractional south half of section eleven, 11, two hundred and fifty-eight 90–100 acres, 258 90–100; and the southwest quarter of section twelve, 12, one hundred and sixty acres, 160. In township sixty-seven, 67, north, range seven, 7, west, fractional southeast quarter of section seven, 7, thirty-five 32–100 acres, 35 32–100 acres; northeast quarter of section eighteen, 18, one hundred and sixty acres, 160; southeast quarter of section seventeen, 17, one hundred and sixty acres, 160; and the southwest quarter of section sixteen, 16, one hundred and sixty acres, 160. Containing in all 1174 22–100 acres.

Town Lots.

Also in the town of Keokuk, lots No. one, 1, two, 2, and three, 3, in block No. sixteen, 16; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. forty-four, 44; lots No. one, 1, two, 2, and three, 3, in block No. forty-two, 42; lots No. seven, 7, eight, 8, nine, 9, ten,

10, eleven, 11, and twelve, 12, in block No. seventy, 70, and all the lots in block No. seventy-one, 71.

Also, in the town of Nashville, lot No. eighty-three, 83; and lot No. one hundred and two, 102.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

150. *Share No. Ninety.*

Lands.

Contains, in township sixty-five, 65, north, range five, 5, west, the fractional northwest quarter of section twelve, 12, one hundred and fifty-two, 32–100 acres, 152 32–100; the north half of section eleven, 11, three hundred and twenty acres, 320; the northeast quarter of section ten, 10, one hundred and sixty acres, 160; the fractional south half of section nineteen, 19, three hundred and seventeen 20–100, acres, 317 20–100; the fractional north half of section thirty, 30, one hundred and eighty-six 9–100 acres, 186 9–100; the north fraction of the southwest quarter of section thirty, 30, one 53–100 acres, 1 53–100; and the fractional northeast quarter of section one, seventy-one 4–100 acres, 71 4–100. Containing in all 1208 18–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. eight, 8, and nine, 9, in block No. seven, 7; lot No. one, 1, in block No. eight, 8; lots No. six, 6, seven, 7, and eight, 8, in block No. twenty-one, 21; lots No. nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. twenty-two, 22; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and eight, 108; and all the lots in block No. one hundred and nine, 109.

Also, in the town of Nashville, lot No. seventy-six, 76; and lot No. two hundred and two, 202.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated; and the lot upon Water street includes all the land in front of it, to the Mississippi river.

151. *Share No. Ninety-one.*

Lands.

Contains, in township sixty-seven (67) north, range five (5) west,

the northwest quarter of section fifteen (15), one hundred and sixty acres (160); the east half of the northwest quarter of section twenty-seven (27), eighty acres (80); northwest quarter of section twenty-seven (27), one hundred and sixty acres (160); southwest quarter of section twenty-eight (28), one hundred and sixty acres (160); fractional northwest quarter of section twenty-six (26), one hundred and thirty-four 15–100 acres (134 15–100). In township sixty-seven (67) north, range six (6) west, the south half of section seventeen (17), three hundred and twenty acres (320); and the southeast quarter of section twenty-one (21), one hundred and sixty acres (160). Containing in all 1185 79–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. three (3), in block No. four (4); lot No. twelve (12), in block No. ten (10); lots No. ten (10), eleven (11), and twelve (12), in block No. twenty-seven (27); lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. one hundred and seventy-five (175); and all the lots in block No. one hundred and seventy-four (174).

Also, in the town of Nashville, lot No. twenty-four (24), and lot No. one hundred and fifty-four (154).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street include also all the land in front of them to the Mississippi river.

152. *Share No. Ninety-two.*

Lands.

Contains, in township sixty-six (66) north, range five (5) west, the northeast quarter of section nine (9), one hundred and sixty acres (160). In township sixty-six (66) north, range six (6) west, the east half of section eleven (11), three hundred and twenty acres (320); northwest quarter of section eleven (11), one hundred and sixty acres (160); east half of the southwest quarter of section eleven (11), eighty acres (80); east half of the northeast quarter of section ten (10), eighty acres (80); southwest quarter of section nine (9), one hundred and sixty acres (160); and the southeast quarter of section fourteen (14), one hundred and sixty acres (160). Containing in all 1120 acres.

Town Lots.

Also, in the town of Keokuk, lot number five (5), in block No.

three (3); lot No. two (2), in block No. fourteen (14); lots No. four (4), five (5), and six (6), in block No. thirty-six (36); lots No. one (1), two (2), three (3), four (4), five (5), and six (6), in block No. one hundred and fifty-three (153); and all the lots in block No. one hundred and fifty-four (154).

Also, in the town of Nashville, lot No. forty-two, 42, and lot No. one hundred and sixty-eight, 168.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and the lot upon Water street includes also all the land in front of it to the Mississippi river.

153. *Share No. Ninety-three.*

Lands.

Contains, in township sixty-five, 65, north, range four, 4, west, fractional southwest quarter of section nineteen, 19, forty 3–100 acres, 40 3–100; fractional northwest quarter of section thirty, 30, fifty-one 22–100 acres, 51 22–100; in township sixty-five, 65, north, range five, 5, west, the southeast quarter of section twenty-three, 23, one hundred and sixty acres, 160 north; half of section twenty-two, 22, three hundred and twenty acres, 320; northeast quarter of section twenty-one, 21, one hundred and sixty acres, 160; west half of the southeast quarter of section twenty-one, eighty acres, 80; and the south half of section fifteen, 15, three hundred and twenty acres, 320. Containing in all 1131 25–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. five, 5, in block No. thirteen, 13; lot No. eight, 8, in block No. fifteen, 15; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. forty-eight, 48; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and twenty-nine, 129; and all the lots in block No. one hundred and twenty-eight, 128.

Also, in the town of Nashville, lot No. sixty, 60; and lot No. one hundred eighty-eight, 188.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and the lot upon Water street also includes all the land in front of it to the Mississippi river.

154. *Share No. Ninety-four.*

Lands.

Contains, in township sixty-five, north, range five, 5, west, the fractional northwest quarter of section thirty-six, 36, seventy-two 92–100 acres, 72 92–100; the south fraction of the southwest quarter of section twenty-five, 25, eight 66–100 acres, 8 66–100; fractional northeast quarter of section thirty-five, 35, one hundred and thirty-six 98–100 acres, 136 98–100; the fractional north half of section eighteen, 18, three hundred and nineteen 25–100 acres, 319 25–100; and the southwest quarter of section sixteen, 16, one hundred and sixty acres, 160. In township sixty-six, 66, north, range five, 5, west, the northwest quarter of section twenty-six, 26, one hundred and sixty acres, 160; and the north half of section twenty-seven, 27, three hundred and twenty acres, 320. Containing in all 1177 81–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. eleven, 11, in block No. thirteen, 13; lot No. eleven, in block No. three, 3; lots No. four, 4, five, 5, and six, 6, in block No. forty-six, 46; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. one hundred and twenty, 120; and all the lots in block No. one hundred and nineteen, 119.

Also in the town of Nashville, lot No. sixty-seven, 67, and lot No. one hundred and ninety-five, 195.

Boundaries.

All the town lots included in the above share, are bounded by the middle of the streets and alleys upon which they are situated.

155. *Share No. Ninety-five.*

Lands.

Contains, in township sixty-five, 65, north, range five, 5, west, fractional east half of the southeast quarter of section twenty-four, 24, seventy-nine 74–100 acres, 79 74–100; the east fraction of the northeast quarter of section twenty-five, 25, eighteen 21–100 acres, 18 21–100; fractional northeast quarter of section twenty-four, 24, one hundred and nineteen 58–100 acres, 119 58–100 acres; the south half of section twenty-two, 22, three hundred and twenty acres, 320; and the whole of section twenty, 20, six hundred and forty acres, 640. Containing in all 1177 53–100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. six, 6, in block No. thirteen, 13; lot No. nine, 9, in block No. fifteen, 15; lots No. one, 1, two, 2, and three, 3, in block No. forty-seven, 47; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block No. one hundred and twenty-six, 126; and all the lots in block No. one hundred and twenty-seven, 127.

Also in the town of Nashville, lot No. sixty-one, 61, and lot No. one hundred and eighty-nine, 189.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are *are* situated, and the lot upon Water street also includes all the land in front of it to the Mississippi river.

156. *Share No. Ninety-six.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the east half of the northwest quarter of section nine, 9, eighty acres, 80, and the northwest quarter of section eight, 8, one hundred and sixty acres, 160. In township sixty-six, 66, north, range six, 6, west, the north half of section eight, 8, three hundred and twenty acres, 320; southeast quarter of section eighteen, 18, one hundred sixty acres, 160; northeast quarter of section sixteen, 16, one hundred and sixty acres, 160; the west half of the northwest quarter of section fifteen, 15, eighty acres, 80; southeast quarter of section twenty-three, 23, one hundred and sixty acres, 160; and the west half of the southwest quarter of section twenty-four, 24, eighty acres, 80. Containing in all, 1200 acres.

Town Lots.

Also in the town of Keokuk, lot No. one, 1, in block No. twelve, 12; lot No. four, 4, in block No. fourteen, 14; lots No. ten, 10, eleven, 11, and twelve, 12, in block No. thirty-six, 36; lots No. one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6; in block No. one hundred and fifty-six, 156; and all the lots in block No. one hundred and fifty-seven, 157.

Also, in the town of Nashville, lot No. forty-four, 44, and lot No. one hundred and seventy, 170.

Boundaries.

All the town lots included in the above share are bounded by the

middle of the streets and alleys upon which they are situated, and the lot upon Water street also includes all the land in front of it to the Mississippi river.

157. *Share No. Ninety-seven.*

Lands.

Contains, in township sixty-six, 66, north, range six, 6, west, the northeast quarter of section thirty-three, 33, one hundred and sixty acres, 160; and the south half of section twenty-six, 26, three hundred and twenty acres, 320. In township sixty-seven, 67, north, range seven, 7, west, the fractional southwest quarter of section eight, 8, forty-six 76–100 acres, 46 76–100; northwest quarter of section seventeen, 17, one hundred and sixty acres, 160; southeast quarter of section thirty-three, 33, one hundred and sixty acres, 160; the northwest quarter of section twenty-eight, 28, one hundred and sixty acres, 160; and the west half of the northeast quarter of section twenty-eight, 28, eighty acres, 80. In township sixty-six, 66, north, range seven, 7, west, the fractional northeast quarter of section four, 4, seventy-nine 19–100 acres, 79 19–100. Containing, in all, 1165 95–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. one, 1, and two, 2, in block No. seventeen, 17; lots No. seven, 7, eight, 8, and nine, 9, in block No. thirty, 30; lots No. nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. eighty-two, 82; lots No. seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, in block No. fifty-nine, 59; and all the lots in block No. sixty, 60.

Also, in the town of Nashville, lot No. eighty-nine, 89, and lot No. one hundred and eight, 108.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street also include all the land in front of them to the Mississippi river.

158. *Share No. Ninety-eight.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the east half of the southeast quarter of section nine, 9, eighty acres, 80; southwest quarter of section sixteen, 16, one hundred and sixty acres, 160; and the northwest quarter of section twenty, 20, one hundred

and sixty acres, 160. In township sixty-six, 66, north, range six, 6, west, the fractional south half of section seven, 7, two hundred and seventy-six 76–100 acres, 276 76–100; southeast quarter of section eight, 8, one hundred and sixty acres, 160; and the east half of section seventeen, 17, three hundred and twenty acres, 320. Containing, in all, 1156 –100 acres.

Town Lots.

Also, in the town of Keokuk, lot No. three, 3, in block No. twelve, 12; lot No. six, 6, in block No. fourteen, 14; lots No. four, 4, five, 5, and six, 6, in block No. twenty-nine, 29; lots No. one, 1, two, 2, three, 3, and four, 4, five, 5, and six, 6, in block No. one hundred and fifty-nine, 159; and all the lots in block No. one hundred and sixty, 160.

Also, in the town of Nashville, lot No. forty-six, 46, and lot No. one hundred and seventy-two, 172.

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and the lot upon Water street also includes all the land in front of it to the Mississippi river.

159. *Share No. Ninety-nine.*

Lands.

Contains, in township sixty-six, 66, north, range five, 5, west, the southwest quarter of section thirty-six, 36, one hundred and sixty acres, 160; and the south half of section thirty-five, 35, three hundred and twenty acres, 320. In township sixty-five, 65, north, range six, 6, west, the northeast quarter of section twelve, 12, one hundred and sixty acres, 160; southeast quarter of section twelve, 12, one hundred and sixty acres, 160. In township sixty-six, 66, north, range six (6) west, the northeast quarter of section nineteen (19), one hundred and sixty acres (160); the fractional southeast quarter of section nineteen (19), one hundred and fifty-eight 47–100 acres (158 47–100); and the fractional northeast quarter of section thirty (30), fifty-seven 79–100 acres (57 79–100). Containing in all 1176 20–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. four (4), five (5), and six (6), in block No. two (2); lots No. five (5), six (6), seven (7), and eight (8), in block No. fifty-two (52); lots No. four (4), five (5), and

and six (6), in block No. fifty-three (53); lots No. seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block No. ninety (90); and all the lots in block No. eighty-nine (89).

Also, in the town of Nashville, lot No. thirty-six (36), lot No. ninety-seven (97), and lot No. one hundred and twenty-nine (129).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated, and those upon Water street also include all the land in front of them to the Mississippi river.

160. *Share No. One Hundred.*

Lands.

Contains, in township sixty-six (66) north, range six (6) west, the west half of the southwest quarter of section thirty-three (33), eighty acres (80); southwest quarter of section thirty-five (35), one hundred and sixty acres (160); and the northeast quarter of section fourteen (14), one hundred and sixty acres (160). In township sixty-seven (67) north, range seven (7) west, the fractional northeast quarter of section twenty-nine (29), one hundred and thirty-two 74–100 acres (132 74–100); the south half of section thirteen (13), three hundred and twenty acres (320); and the north half of section twenty-four (24), three hundred and twenty acres (320). Containing, in all, 1172 74–100 acres.

Town Lots.

Also, in the town of Keokuk, lots No. seven (7), eight (8), and nine (9), in block No. sixteen (16); lots No. ten (10), eleven (11), and twelve (12), in block No. forty-five (45); lots No. seven (7), eight (8), and nine (9), in block No. forty-two (42); lots No. seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block No. sixty-seven (67); and all the lots in block No. sixty-eight (68).

Also, in the town of Nashville, lot No. eighty-five (85), and lot No. one hundred and four (104).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated.

161. *Share No. One Hundred and One.*

Lands.

Contains in township sixty-six (66) north, range five west, the

southwest quarter of section three (3), one hundred and sixty acres (160). In township sixty-seven (67) north, range six (6) west, the south half of section thirty-four (34), three hundred and twenty acres (320), and the northeast quarter of section thirty-four (34), one hundred and sixty acres (160). In township sixty-six (66) north, range six (6) west, the fractional northeast quarter of section two (2), one hundred and sixty-five 17–100 acres (165 17–100); the fractional west half of the northwest quarter of section one (1), eighty acres (80); and the southwest quarter of section three (3), one hundred and sixty acres (160); containing in all 1126 43–100 acres.

Town Lots.

Also in the town of Keokuk, lot No. twelve (12) in block No. four (4); lot No. nine (9) in block No. nine (9); lots No. one (1), two (2), and three (3), in block No. sixty-five (65); lots No. seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12), in block No. one hundred and forty-eight (148); and all the lots in block No. one hundred and forty-seven (147).

Also in the town of Nashville, lot No. thirty-seven (37) and lot No. one hundred and sixty-three (163).

Boundaries.

All the town lots included in the above share are bounded by the middle of the streets and alleys upon which they are situated. Lots No. seven (7), eight (8), nine (9), ten (10) eleven (11), and twelve (12), in block No. one hundred and forty-seven (147), also include the whole width of Cedar street in front of them. And the lot upon Water street also includes all the land in front of it to the Mississippi river.

162. Description of Lots.

In describing the boundaries of the town lots situated on Water street in the towns of Keokuk and Nashville, we have made them to include all the land in front of them to the Mississippi river, by which we mean in front of them, facing the river, parallel with the streets running from Fourteenth street to Water street, in the town of Keokuk; and in the town of Nashville parallel with the streets running directly east to the river; all corner lots bounded by the middle of other streets, as above, are expected to follow the middle of said streets across Water street, but in no case, unless especially expressed, is any lot to include the land in front of other lots fronting on Water street. All the lots situated upon Cedar, Orleans, and Fourteenth street include the whole width of the streets upon which they are situated, and each of the corner lots on said streets, all the

land to the middle of the other street on which it is situated, and thence running in the middle of said street to the outside of the town; as, for example, lot No. six (6) in block No. one hundred and sixty-two (162), includes all the land in front of it on Orleans street and to the middle of Twelfth street. The middle of Twelfth street is supposed by us to extend across Orleans street to the town line, and so all other streets are considered as crossing the outside streets to the extreme outside of the town.

Division of Lands.

Your commissioners would further explain that, in the partition, they have adopted the regular division and subdivision lines as made by the original survey of Jenifer T. Sprigg, and the quantity of land in each section, or quarter section, is the same as reported by said Sprigg. In every case where a quarter section is divided, the division line is made north and south; and in every case where a quarter section contains less or more than one hundred and sixty acres (160), is divided, one portion or side of the division line
163. contains eighty (80) acres, and the other portion, being next to a river or a crossing line, contains the fractional part of the subdivision, more or less; as, for example, in township sixty-seven (67) north, range five (5) west, the southwest quarter of section nineteen (19) is divided: the east half contains eighty (80) acres, and the west half, being next the closing or township line, contains but seventy-seven (77) and 92–100 acres (77 92–100); and so of others. The same rule is applied in the division of sections. If we say the fractional south half or south half of fractional section two (2), in township sixty-six (66), range seven (7) west, we mean to include only that portion south of the regular subdivision line containing only seventy-one and 93–100 acres (71 93–100), while the north half of the same section three hundred and twenty acres (320). We have made no new lines in any portion of the surveyed tract, except in the division of a few quarter sections, as will be seen on the plat herewith returned, marked E. On examination of the plat marked B., agreed on and filed as the plat by which your commissioners were to make partition, the following important errors were found, as will more fully appear by the corrected map or plat accompanying this report, and marked A.

Enumeration of Errors.

The errors are as follows, to wit: That portion of fractional township sixty-seven (67) north, range four (4) west, designated on plat B. as a cluster of islands, we found unsurveyed, but attached to the main land, and perfectly accessible to in all seasons, except in extreme high water, by teams. The slue which is represented on plat A. as commencing at the east line of section eight (8), and emptying

into the Mississippi river in section eighteen (18), for about one-fourth of the distance is perfectly dry, except in high water, and the remaining distance the water in the slue is made by springs of the purest water to be found upon the tract. The island, with the exception of one or two ponds, which cover some four or five acres of ground, is a fine, rich soil, dry and suitable for cultivation, or the best of meadow land, covered at present with a heavy growth of timber. Your commissioners have therefore made partition of said land by imaginary lines, drawn to correspond with the section and subdivision section lines, as will appear by plat A. and plat E., and we have attached the same to the main land in half mile widths running to the Mississippi river.

Other apparent and positive errors in the aforesaid plat B., in numbering the acres contained in the fractional quarter section, will appear, as follows: In township sixty-seven, 67, north, range four, 4, west. The southeast quarter of section four, 4, by map B., 34 and 67–100 acres; as corrected, 34 and 7–100 acres. The southeast quarter of section eleven, 11, in township sixty-seven, 67, north, range seven, 7, west, the southeast quarter of section eleven, 11, by map B., 106 and 6–100; as corrected, 106 acres. Southeast quarter of section twenty-nine, 29, by map B., 167 and 39–100 acres; as corrected, 157 and 39–100 acres. The northwest quarter of section 32, by map B., 46 and 90–100 acres; as corrected, 45 and 90–100 acres. In township sixty-seven, 67, range six, 6, west, the northwest quarter of section thirty, 30, by map B., 128 and 33–100 acres; as corrected, 128 and 83–100 acres. In township sixty-seven, 67, north, range five, 5, west, the southeast quarter of section 34, by map B., 127 and 65–100 acres; as corrected, 127 and 5–100 acres.

The northeast qr. of section 26, by map B., 11 and 65–100 acres.

The northwest quarter of section 24, by map B., 139 and 82–100, 159 and 82–100 acres.

The southeast qr. of section 13, by map B., 11 and 20–100 acres.

In township sixty-six (66) north, range seven (7) west, the southwest quarter of section 12, by map B., 93 and 93–100 acres, as corrected, 93 and 98–100 acres.

In township sixty-six (66), range six (6) west, the northwest quarter of section 32, by map B., 73 and 56–100 acres, as corrected, 73 and 50–100 acres.

The northeast quarter of section 5, by map B., 161 and 58–100 acres, as corrected, 161 and 8–100 acres.

The northeast quarter of section 6, by map B., 160 and 165. 76–100 acres, as corrected, 160 and 70–100 acres.

In township sixty-five (65) north, range six (6) west, the northwest quarter of section 4, by map B., 87 and 8–100 acres, as corrected, 97 and 8–100 acres.

The northeast quarter of section 14, by map B., 36 and 95–100 acres, as corrected, 136 and 95–100 acres.

The southwest quarter of section 14, by map B., 62 and 76–100 acres, as corrected, 52 and 70–100 acres.

The northwest quarter of section 23, by map B., 63 and 32–100 acres, as corrected, 63 and 82–100 acres.

In township sixty-five (65) north, range five (5) west, the northwest quarter of section 34, by map B., 139 acres, as corrected, 159 and 37–100 acres.

The southwest quarter of section 34 south, fract. 43 and 43–100 acres, as corrected, 45 and 43–100 acres.

The southeast quarter of section 33 south, fract.
as corrected, 10 and 6–100 acres.

The southeast quarter of section 34, by map B., 31 and 83–100 acres, as corrected, 31 and 53–100 acres.

The southwest quarter of section 35, by map B.,
acres, as corrected, 24 and 43–100 acres.

The northwest quarter of section 36, by map B.,
acres, as corrected, 72 and 92–100 acres.

The southwest quarter of section 25 south, fract.
acres, as corrected, 8 and 66–100 acres.

The northwest quarter of section 25 west, fract.
acres, as corrected, 25 and 5–100 acres.

The northwest quarter of section 25 north, fract.
acres, as corrected, 4 and 63–100 acres.

The northeast quarter of section 25 east, fract.
acres, as corrected, 18 and 4–100 acres.

The southeast quarter of section 26, by map B., 153 and 6–100 acres, as corrected, 153 and 25–100 acres.

The northeast quarter of section 24, by map B., 119 and 38–100 acres, as corrected, 119 and 58–100 acres.

The southeast quarter of section 13, by map B.,
acres, as corrected, 52 and 68–100 acres.

The southeast quarter of section 1, by map B., 17 and 33–100 acres, as corrected, 17 and 53–100 acres.

In township sixty-six (66) north, range five (5) west, the southeast quarter of section 3, by map B., 106 acres, as corrected, 106 and 57–100 acres.

The northeast quarter of section 3, by map B., 101 acres, as corrected, 101 and 70–100 acres.

The northeast quarter of section 6, by map B., 132 and 34–100 acres, as corrected, 161 and 24–100 acres.

The northwest quarter of section 6, by map B., 157 and 60–100 acres, as corrected, 157 and 68–100 acres.

In township sixty-four (64) north, range four (4) west, the northeast quarter of section 4, by map B., 80 and 73–100 acres, as corrected, 80 and 78–100 acres.

The northwest quarter of section 3, by map B., 33 and 31–100 acres, as corrected, 39 and 21–100 acres.

166. Quarter Sections made Fractional.

By reservation from partition of the land included in the patent issued to the heirs of Thomas F. Redick, the following quarter sections have been made fractional.

In township sixty-six (66) north, range five (5) west, the southwest quarter of section eleven (11) thirteen acres (13); northwest quarter of section fifteen (15) one hundred and fifty-eight and 2–100 acres, (158 2–100); southwest quarter of section ten (10) one hundred and fourteen and 60–100 acres (114 60–100); the northwest quarter of section ten (10) one hundred and fifty-nine and 54–100 acres (159 54–100).

Quarter Sections Enlarged.

The following quarter sections have been enlarged, to wit, the northeast quarter of section fourteen (14), by plat B., sixty-eight and 44–100 acres (68 44–100), by the reservation, contains one hundred and sixty acres (160), plat A. The southeast quarter of section eleven (11), by plat B., thirty-one and 43–100, plat A., one hundred and thirty and 86–100 acres (130 86–100). Northwest quarter of section fourteen (14), by plat B., fifty-seven and 8–100 acres (57 8–100), and by plat A., one hundred and six and 66–100 acres (106 66–100). The southeast quarter of section fourteen (14), by plat B., one hundred and fifty-two and 39–100 acres (152 39–100), and by plat A., one hundred and sixty acres (160). The southwest quarter of section fourteen (14), by plat B., one hundred and fifty-nine and 31–100 acres (159 31–100), and by plat A., one hundred and sixty acres (160).

Fractions of Quarter Sections Diminished.

The following quarter sections have the fractions diminished. The northeast quarter of section fifteen (15), by plat B., one hundred and twelve and 15–100 acres (112 15–100), by plat A., seventy-nine and 84–100 acres (79 84–100). The northeast quarter of section ten (10), by plat B., one hundred and forty-nine and 39–100 acres (149 39–100), by plat A., forty-four and 12–100 (44 12–100). And the following fractional quarter sections on plat B., are all included in the patent. The southeast quarter of section ten (10) one hundred and twenty-seven acres (127); and the northeast quarter of section eleven (11) two and 21–100 acres (2 21–100).

167. Islands in the Mississippi.

There are several large islands in the Mississippi river, opposite

the Half-breed Tract, and lying on the west side of the main channel of said river, under the jurisdiction of Iowa. These islands are three or four in number; one of them, opposite the town of Montrose, is of but little value; the others, lying between Montrose and Fort Madison, are heavily wooded and contain many hundred acres of valuable tillage land. Some improvements have been already commenced on one or more of them. Your commissioners have made no survey or partition of these islands, but believing them to belong to the half-breed Sac and Fox reservation, report the above facts.

Islands in the Des Moines.

There are several small islands in the Des Moines, which are of little or no value, and of which your commissioners have taken no notice, but there is one designated on the plat A. as the Cut-off, which is now under the jurisdiction of the State of Missouri, and contains about three hundred and forty acres, a considerale part of which is good tillage land, and the whole of it covered with timber at the time of the treaty in 1824 (which made the half-breed Sac and Fox reservation); the water in the Des Moines runs wholly around on the northwest and south sides of the island, which is now represented as dry, in low water. It has also been stated to your commissioners that in the year 1829 the whole river run in the same channel, since which time, at some great flood, the river has cut the channel in which it now runs.

Your commissioners have made no survey or partition of this island, but report the above facts for the consideration of the honorable court; and the said commissioners do further report, that all the islands before mentioned are so situated that a partition
168. thereof cannot be made without great prejudice to the owners thereof, and they recommend that the same, except that which is designated as the "Cut-off," and which is under the jurisdiction of the State of Missouri, be sold, and the proceeds thereof be divided, pursuant to the statute in such case made and provided.

Costs of Surveys, Partition, &c.

In conclusion, your commissioner will further report, that the aggregate amount of the costs for making the necessary surveys and partition, including the expense of a surveyor, and other assistants, together with the wages of the commissioners, stationery, office rent, &c., is nine hundred and sixty-six dollars.

All of which, together with the maps and plats hereunto attached, is respectfully submitted.

SAMUEL B. AYRES,
HARMON BOOTH,
JOSEPH WEBSTER,
Commissioners.

Fort Madison, 4th October, 1841.

168. Iowa Territory, Lee County, *sct.*

Be it remembered, that on this the sixth day of October, A. D. 1841, personally appeared before me, the undersigned, clerk of the District Court of said county, in open court, Samuel B. Ayres, and Harmon Booth, two of the above-named commissioners, and acknowledged the foregoing to be their report of the partition of the land mentioned in the proceedings in the case of Josiah Spaulding and others, against Euphrosine Antaya and others, in said court, for a partition of the half-breed Sac and Fox reservation, in said county.

Description of Plat of the Town of Keokuk.

Plat of the town of Keokuk, in the county of Lee, Territory of Iowa, situated upon the Half-Breed Tract, the outlines of which were designated and marked by Jenifer T. Sprigg, in his survey of said tract as town reservation. All the streets, except Main and Water streets, are sixty-six, 66, feet wide; Main street is one hundred, 100, feet wide; Water street is of irregular and unequal widths at the points where the dotted lines pass across the same; the street is of the width, in feet, as is represented by the figures set on said lines. All the alleys are twenty, 20, ft. in width. All the streets have their names written in the same. All the lots have their number set in the smaller sized figures in the same. All the blocks have their numbers set in the larger figures in the centre of each block. All lots, not hereinafter enumerated as of different dimensions, are fifty, 50, feet wide, by one hundred and forty, 140, feet long. All lots of blocks, one, 1, nineteen, 19, and fifty-six, 56, with lot four, 4, of block eight, 8, lot four, 4, of block fifty-five, 55, and lot six, 6, of block fifty-seven, 57, are fifty feet square. Lots one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, of block seven, 7, lots one, 1, two, 2, and three, 3, of block 8, lots one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, in block of block eighteen, 18, lots one, 1, and two, 2, of block twenty, 20, lots two, 2, and three, of block fifty-five, are fifty, 50, feet wide by one hundred, 100, feet long. All of block four, 4, five, 5, six, 6, nine, 9, seventeen, 17, sixty, 60, one hundred and two, 102, one hundred and twenty-five, 125, one hundred and forty-one, 141, one hundred and fifty-five, 155, one hundred and seventy-two, 172, with lots seven, 7, eight, 8, nine, 9, and ten, 10, of block two, 2, lots seven, 7, eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, of block three, 3, lots eight, 8, nine, 9, ten, 10, eleven, 11, and twelve, 12, of block seven, 7, lots seven, 7, eight, 8, and nine, 9, of block eighteen, 18, lots three, 3, four, 4, five, 5, six, 6, seven, 7, eight, 8,
nine, 9, ten, 10, eleven, 11, and twelve, 12, of block twenty,
170. 20, lots two, 2, three, 3, four, 4, five, 5, six, 6, seven, 7,
eight, 8, nine, 9, ten, 10, eleven, 11, twelve, 12, of block

fifty-four, 54, lot one, 1, of block fifty-five, 55, lots seven, 7, eight, 8, nine, 9, and ten, 10, of block fifty-seven, 57, lots four, 4, and five, 5, of block eighty-four, 84, are fifty, 50, feet wide by one hundred and fifty, 150, feet long. Arch, Fayette, and Chatham squares, are each three hundred, 300, feet square, or the size of one entire block. First street extends from the intersection of Morgan street with Water street, to the intersection of Tiema street with Water street, 2896 feet. Second street extends from the intersection of Franklin street with Water street, to the intersection of Carrol street with Water street, 4626 feet. Third, 3d, Fourth, 4th, Fifth, 5th, Sixth, 6th, Seventh, 7th, Eighth, 8th, Ninth, 9th, Tenth, 10th, Eleventh, 11th, Twelfth, 12th, Thirteenth, 13th, and Fourteenth, 14th, streets, extend northeasterly and southwesterly across the town, that is from Orleans street to Cedar street, 5824 feet.

Water street extends the whole front or river side of the town, or from the intersection of Orleans street with the Mississippi river down the right bank of said river with the meanders thereof, to the intersection of Cedar street with the Mississippi river. The following streets extend from Fourteenth street to their intersection with Water street, and are of such length, in feet, as the number following their names indicate. Orleans, 3960; Franklin, 4276; Fulton, 4542; Morgan, 4692; High, 4958; Concert, 5058; Blonde av., 5058; Main, 5058; Johnson, 5058; Exchange, 5008; Bank, 4958; Tiema, 4808; Des Moines, 4692; Palen, 4542; Carrol, 4276; Bridge, 4126; Cedar, 3960; drawn of scale of four hundred, 400, ft. to the inch. At the northwest corner of lot seven, 7, block two hundred and nine, 209, the original northwest corner of

171. town reservation bears south 64¾° west, ninety-five feet; and a white oak, fifteen, 15, inches in diameter, bears north 22½° west, sixteen feet, marked with a blaze and three, 3, notches. At the southwest corner of lot twelve, 12, in block eighty-three, 83; the original stone post set for a corner of "Town Reservation," bears south thirteen and half, 13½, west, eighty-six feet and six, 6, inches; a chestnut oak, eight inches in diameter, bears south 83 degrees west, forty-four, 44, feet, marked with a blaze and three notches.

Lots one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, of block two, 2, and lots one, 1, two, 2, three, 3, four, 4, five, 5, and six, 6, of block three, 3, are fifty feet wide by one hundred, 100, feet long.

172. *Description of the Plat of Nashville.*

Plat of the town of Nashville, situated on fractional section nineteen (19), township sixty-six (66) north, range four (4) west, in the county of Lee, and Territory of Iowa. All the streets in said town are sixty-six (66) feet wide, except Broadway, which is one hundred and thirty (130) feet wide, and Main street, which is eighty-

two and half (82½) ft. wide. All the streets run north and south, and east and west, except Water street, which follows the course of the river. All the lots west of Prospect street are one hundred and thirty-six (136) feet square, except lots one hundred and sixty-nine (169), and one hundred seventy, (170), which are one hundred and thirty-six (136) feet by one hundred sixty-five (165) feet; and No. one hundred eighty-three (183), and one eighty-four (184), which are sixty-eight (68) feet wide; and No. two hundred eleven (211), two hundred twelve (212), and two hundred thirteen (213), which are fractional, and of unequal lengths, and one hundred thirty-six (136) feet wide. All the lots between Main and Prospect streets are sixty-eight (68) feet wide, except No. one hundred thirty-one (131), one hundred thirty-two (132), which are one hundred sixty-five (165) feet wide, and one hundred thirty-two (132) feet in length, except one (1), two (2), three (3), four (4), five (5), eight (8), nine (9), and ten (10), which are fractional, and of unequal lengths. All the lots between Water and Main streets are sixty-eight (68) feet wide, except No. eighty-one (81) and *eighty* eighty-two (82), which are one hundred sixty-five (165) feet wide, and one hundred thirty-two (132) in length, except those numbering from fifty-five (55) to sixty-two (62), which are one hundred and sixty-five (165) feet in length; those numbering from fifty-
173. one to fifty-four (54), and from seventy-one (71) to seventy-four (74), are one hundred thirty-six (136) feet in length; No. thirty-nine (39) is ninety-nine (99) feet in length; No. thirty-seven (37), thirty-eight (38), forty-one (41), forty-two (42), are sixty-six (66) feet east and west; No. eighty-one (81) is two hundred (200) feet in length; No. eighty (80) is two rods long, by fourteen rods; No. seventy-five is a triangular lot; those numbering from seventy-six (76) seventy-nine (79), are sixty-eight (68) feet wide. All the alleys are twenty links in (length) width.

Drawn on a scale of three hundred (300) feet to the inch. At the northwest corner of lot fifty-one (51), and the northeast corner of lot No. forty-three, stone monuments are erected, from which to commence future surveys.

174. Territory of Iowa, District Court for the First Judicial District for Lee County.

October Term, 1841.

October 7, 1841.

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al.

Drawing of Shares.

Pursuant to the order made in this cause on the sixth day of the

present month, and the statute in such case made and provided, the clerk of this court now proceeds in open court, at the court-house, in Fort Madison, in said county, to make allotment of the shares mentioned in said order, by first numbering the shares corresponding with the numbers in the reports of the commissioners, filed in this cause, and with the numbers marked on the map or plat of the land to be divided, annexed to said reports, and then drawing the names of the corresponding owners, after the manner of selecting a petit jury; and the result of such allotment is as follows,—the names of the owners of the respective shares, as the same shares are specified in said reports, and as their names were drawn by said clerk, being set opposite the numbers drawn by them respectively:

Share number	1	was drawn by	Marsh, Lee & Delavan, trustees, &c.
do	2	do	William Phelps.
do	3	do	Rosalie O. Gleim.
do	4	do	Marsh, Lee & Delavan, trustees.
do	5	do	Charles Thompson.
do	6	do	Patrick Walsh, one half share.
do	do	do	Etienne Provost, one half share.
do	7	do	Marsh, Lee & Delavan, trustees, &c.
do	8	do	Marsh, Lee & Delavan, trustees, &c.
do	9	do	Marsh, Lee & Delavan, trustees, &c.
do	10	do	George H. Crossman, five-sixths of a share.
do	do	do	And the heirs of Otis Reynolds, one-sixth of a share.
do	11	do	William H. Smith.
do	12	do	John B. Sarpy, one-third of a share.
do	do	do	Edmund H. McCabe, one-third of a share.
do	do	do	Heirs of J. A. H. Palmer, one-third of a full share.
do	13	do	Margaret Farrar.
do	14	do	John Walsh and Edward Walsh.
do	15	do	Wright, McDaniel & Darrah, three-fourths of a share.
do	do	do	Edwin Manning, one-fourth of a share.
do	16	do	Marsh, Lee & Delavan, trustees, &c.
do	17	do	Marsh, Lee & Delavan, trustees, &c.
do	18	do	Henry S. Austin, one half share.
do	do	do	John Bertram, one half share.
do	19	do	Thomas Connelly.
do	20	do	William Gillis.
do	21	do	Antoine Le Claire.
do	22	do	Marsh, Lee & Delavan, trustees, &c.
do	23	do	Josiah Spaulding, three-eighths,

Share number	23	was drawn by	Archibald Gamble, one-eighth, and
do	do	do	John William & Dalzell Smith, one-half share.
do	24	do	Marsh, Lee & Delavan, trustees, &c.
do	25	do	Marsh, Lee & Delavan, trustees, &c.
do	26	do	Greene Erskine, seventeen twenty-fourths.
do	do	do	Heirs of Otis Reynolds, seven twenty-fourths.
do	27	do	Wright, McDaniel & Darrah.
do	28	do	Marsh, Lee & Delavan, trustees, &c.
do	29	do	Abijah Fisher, three-fourths of a share.
do	do	do	D. W. Kilbourne, one-eighth.
do	do	do	Henry S. Austin, one-eighth.
do	30	do	Marsh, Lee & Delavan, trustees, &c.
do	31	do	Mary L. Murdock.
do	32	do	Marsh, Lee & Delavan, trustees, &c.
do	33	do	William Phelps.
do	34	do	James R. McDonald.
do	35	do	Marsh, Lee & Delavan, trustees, &c.
do	36	do	Marsh, Lee & Delavan, trustees, &c.
do	37	do	John H. Lines.
do	38	do	Joseph W. Walsh, one half share.
do	do	do	Angitiqua Mattebone, one half share.
do	39	do	Patrick Walsh, one half share.
do	do	do	John O. Rourke.
do	40	do	Antoine Le Claire.
do	41	do	Samuel Abbott & Abraham Wendell, one-half of a share.
do	do	do	James L. Schoolcraft, one half share.
do	42	do	Josiah Spaulding.
do	43	do	Marsh, Lee & Delavan, trustees, &c.
do	44	do	Wilson Overall.
do	45	do	Marsh, Lee & Delavan, trustees, &c.
do	46	do	John and Edward Walsh.
do	47	do	Marsh, Lee & Delavan, trustees, &c.
do	48	do	Marsh, Lee & Delavan, trustees, &c.
do	49	do	Henry McKee.
do	50	do	Euphrosine Antaya.
do	51	do	Margaret Farrar.
do	52	do	Manning & Hearn.
do	53	do	Heirs of H. K. Ortley, three-fifths of a share.
do	do	do	Herman C. Cole, one-fourth of a share.
do	do	do	Joseph Ridgway, trustee of George Patch, one-third of a share.

Share number	54	was drawn by	John Williams and Dalzell Smith.
do	55	do	Marsh, Lee & Delavan, trustees, &c.
do	56	do	Marsh, Lee & Delavan, trustees, &c.
do	57	do	Joseph W. Walsh, one half share.
do	do	do	Antoine Garcia and wife, one half share.
do	58	do	Hugh Tumilty.
do	59	do	John C. Ward, one-half a share.
do	do	do	Garret V. Denniston, one half share.
do	60	do	James Manning and Sheldon Norton, one half share.
do	do	do	Ebenezer Dayres, one half share.
do	61	do	The heirs at law of Nathaniel Knapp.
do	62	do	Marsh, Lee & Delavan, trustees, &c.
do	63	do	Marsh, Lee & Delavan, trustees, &c.
do	64	do	David W. Kilbourne, one half share.
do	do	do	Edward Kilbourne, one half share.
do	65	do	Marsh, Lee & Delavan, trustees, &c.
do	66	do	Marsh, Lee & Delavan, trustees, &c.
do	67	do	Elizabeth Hunt.
do	68	do	John, William, and Dalzell Smith.
do	69	do	Marsh, Lee & Delavan, trustees, &c.
do	70	do	The heirs at law of Nathaniel Knapp.
do	71	do	Eliza O. Perkins.
do	72	do	Greene Erskine.
do	73	do	Marsh, Lee & Delavan, trustees, &c.
do	74	do	Benjamin Franklin Messenger.
do	75	do	Marsh, Lee & Delavan, trustees, &c.
do	76	do	Marsh, Lee & Delavan, trustees, &c.
do	77	do	Antoine Le Claire.
do	78	do	Marsh, Lee & Delavan, trustees, &c.
do	79	do	James Miner (H. T. Reid, guardian).
do	80	do	Antoine Le Claire.
do	81	do	Augustus Gonville.
do	82	do	Marsh, Lee & Delavan, trustees, &c.
do	83	do	Marsh, Lee & Delavan, trustees, &c.
do	84	do	Marsh, Lee & Delavan, trustees, &c.
do	85	do	William Price.
do	86	do	The heirs at law of Nathaniel Knapp, seven-eighths of a share.
do	do	do	Henry Brown, one-eighth of a share.
do	87	do	Antoine Le Claire, three-eighths of a share.
do	do	do	John Wright, one-fourth of a share.
do	do	do	Cyrus Peck, one-eighth of a share.
do	do	do	Stephen Gore, one-eighth of a share.

Share number 87 was drawn by John and Edward Walsh, one-eighth of a share.

do	88	do	Marsh, Lee & Delavan, trustees, &c.
do	89	do	Marsh, Lee & Delavan, trustees, &c.
179. do	90	do	Michael Tesson.
do	91	do	Marsh, Lee & Delavan, trustees, &c.
do	92	do	Marsh, Lee & Delavan, trustees, &c.
do	93	do	Marsh, Lee & Delavan, trustees, &c.
do	94	do	Antoine Le Claire.
do	95	do	Archibald Gamble.
do	96	do	Marsh, Lee & Delavan, trustees, &c.
do	97	do	Marsh, Lee & Delavan, trustees, &c.
do	98	do	Antoine Le Claire.
do	99	do	James L. Burtis.
do	100	do	William H. Smith.
do	101	do	Marsh, Lee & Delavan, trustees, &c.

Drawing and Allotment confirmed.

Whereupon the drawing and allotment above mentioned, having been completed in manner aforesaid, with the result aforesaid, on the motion of William Silliman, of counsel for certain of the parties, and by consent of all the other parties to this suit, it is ordered, adjudged, and decreed, and this court doth order, adjudge, and decree, that the above drawing and allotment be confirmed, and that the parties hold the shares whose numbers are opposite their respective names, in manner aforesaid, and that the partition made in this cause be firm and effectual forever.

180. And afterwards, to wit, on the sixth day of May, 1842, the following proceedings were had at the District Court in the county aforesaid, to wit:

JOSIAH SPALDING et al.
v.
EUPHROSINE ANTAYA et al.

On this day came Samuel B. Ayres and Harmon Booth, commissioners, and made their report in open court. After an examination of said report, it was ordered by the court to be entered of record, as part of the proceedings in this suit.

Report of Commissioners on Sale of Islands.

The undersigned, commissioners appointed to make partition of the Sac and Fox half-breed reservation, situate in the county of Lee, and Territory of Iowa, would report, that in accordance with an order

of the District Court of the county aforesaid, in chancery sitting, at the October term thereof, 1841, after having given legal notice, proceeded to sell at public vendue, on the 23d day of April, 1842, at the Washington House, in the town of Fort Madison, to the highest bidder, sundry islands in the Mississippi river belonging to said reservation, and, among other sales, sold to L. B. Reeves islands numbered one (1), four (4), and six (6), as appears on the plat hereunto annexed, containing sixty-two and 80–100 acres (62 80–100), for the sum of five dollars and forty-three cents ($5 43); also to Amos B. Tomlinson island numbered two (2), containing twelve (12) acres, at forty-five and a half (45½) cents per acre, amounting to ($5 46); also to A. N. Deming island numbered three (3), containing twelve and one half acres (12½), at nineteen and one half cents per acre (19½), amounting to two dollars and forty-four cents ($2 44); also island numbered five (5) to John Williams, containing
181. twenty-two and a half acres (22½), at twenty-nine cents per acre (29), amounting to six dollars and forty-two cents ($6 42); also to Levi Bracken island numbered seven (7), containing one hundred and eighty-nine acres (189), at thirty-seven and one half cents per acre (37½), amounting to seventy dollars and eighty-eight cents ($70 88); also to Wilson Law and Arthur Morrison island numbered eight (8), containing six hundred and forty-four acres (644), at forty and a half cents (40½) per acre, amounting to two hundred and sixty dollars and eighty-two cents ($260 82–100); also to Wilson Law and Arthur Morrison island numbered nine (9), containing seven hundred and thirty-four acres (734), at twenty-two and a half cents per acre (22½) amounting to one hundred and sixty-five dollars and fifteen cents ($165 15).

Terms of Sale, &c.

The above-named islands sold for the gross amount of five hundred and sixteen dollars and sixty cents ($516 60), one-third of which amount was paid to us in hand, the remaining two-thirds to be secured by the promissory notes of the purchaser, with a mortgage upon the premises sold, payable the one-half in six months, and the remaining sum in one year, from and after the day of the sale above mentioned.

Expenses of Sale, &c.

We would further report, that the charges and expenses for examination of islands, meandering of river, assistants, boat hire, platting, stationery, sale, and conveyance, amount to the sum of ninety-five dollars and twenty-five cents ($95 25), which amount we have deducted from the amount paid to us, and the balance of said sum we have returned to court.

All of which we respectfully submit.

SAMUEL B. AYRES,
HARMON BOOTH,
Commissioners.

FORT MADISON, April 28th, 1842.

182. State of Iowa, County of Lee, *sct.*

I, Erie J. Leech, clerk of the District Court of said County of Lee, the same being a court of record, and I having possession of the records and proceedings of said court, as well while a territorial as a State court, do hereby certify that the foregoing one hundred and eighty-one pages, being from one to one hundred and eighty one inclusive, contains a true, full, and complete transcript of the record and proceedings in a certain action of partition, partitioning the Half-Breed or Sac and Fox reservation in said county of Lee, wherein Josiah Spaulding and others were complainants, and Euphrosine Antaya and others were defendants, as fully and completely as the same appears among the records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said District Court of said County [SEAL.] of Lee, this twenty-eighth day of April, in the year one thousand eight hundred and fifty-six.

ERIE J. LEECH,
Clerk District Court, Lee County, Iowa.

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Which was admitted without objection; by which it appears that said real estate was drawn, in said decree of partition, by the trustees of the New York Company, in shares numbered eighty-four (84), fifty-six (56), ninety-three (93), and forty-eight (48); as will appear by reference thereto. The plaintiff then offered in evidence a complete record of a judgment rendered against Isaac Galland in favor of Joseph S. Hull, together with the executions, levies, sales, and returns thereon, which are in the words and figures following:

State of Iowa, County of Lee.

Be it remembered, that at a District Court for the County of Lee, in the then Territory, now State of Iowa, begun and held in said county on Monday, the 2d day of October, A.D. 1843, the Hon. Charles Mason, sole judge of said court, presiding, among other the following proceedings were had, to wit:

On the 4th day of October, a confession of judgment was filed in said court, which reads in the words and figures following, to wit:

Know all men by these presents, that whereas I, Isaac Galland, now resident in the city of St. Louis, State of Missouri, formerly resident in Lee County, Territory of Iowa, am justly indebted unto Joseph S. Hull, of said St. Louis, on account of a bill of exchange drawn by me, dated at Commerce, Illinois, February eighth, in the year of our Lord one thousand eight hundred and thirty-seven, on

the Reverend George Stebbins, of New York city, in the State of New York, and accepted by him; which bill was for the sum of seven hundred dollars, payable in four months after date thereof, to the order of W. C. & J. S. Hull, been awarded to the present holder, Joseph S. Hull. But whereas I am desirous of securing said Joseph S. Hull the payment of said bill of exchange, which was protested for non-payment when the same fell due, and which has never been paid since, or any part thereof, and wish to give him a judgment against me in the Territory of Iowa for the amount of said bill of exchange, with the damages and interest due thereon; now, therefore, I, the said Isaac Galland, have made, constituted, and appointed Messrs. Huggins & Mills, attorneys, of the town at Burlington, in said Iowa, or any other attorney or attorneys at law in said Territory of Iowa, to appear at any term of any District Court sitting at Lee County, in said Territory, or any other court sitting in said county of Lee, when it is proper for said judgment to be entered or made, and confess and cause to be entered up against me, the said Galland, in such manner as may be legal and proper, either by pleading to a declaration filed or in any other mode, a judgment in favor of said Joseph S. Hull for the amount of said bill of exchange, with ten per cent. damages thereon, together with the interest now due on said bill, and which shall be due at the time said judgment is entered, and hereby notifying and informing everything which shall be done under and by virtue of this power.

In testimony whereof, I have hereto set my hand and seal, this twenty-fourth day of January, in the year of our Lord one thousand eight hundred and forty-three, at St. Louis aforesaid.

ISAAC GALLAND.

In presence of
J. DAVIS.

State of Missouri, County of St. Louis.

Be it remembered, that on this twenty-sixth day of January, in the year of our Lord one thousand eight hundred and forty-three, before me, Peter Ferguson, judge of the Probate Court of the county of St. Louis, in the State of Missouri, personally appeared John Davis, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as a witness thereto, who being by me duly sworn, on his oath deposed and said, that Isaac Galland, who is personally known to him to be the person whose name is subscribed to said instrument, signed and executed the same in his presence, and acknowledged the same to be his hand and seal, act and deed for the purposes therein mentioned, and that he, the said John Davis, signed the same as a witness thereto at the request of said Isaac Galland.

In testimony whereof, there being no clerk of said Probate Court,

and being authorized by law to certify my official acts, I hereto set my hand and affix the seal of said Probate Court, which is a court of record having a seal, at office in this city of St. Louis, in the county and State aforesaid, the day and year before written.

PETER FERGUSON,
Judge of Probate.

No. COMMERCE, Ill., Feb. 10th, 1837.

Exchange, for $700.

Four months after date of this my first of exchange, second of the same tenor and date unpaid, pay to the order of W. C. & J. S. Hull seven hundred dollars, value received, and charge the same to account of,

Yours, truly, J. GALLAND.

To Rev. GEO. STEBBINS,
42 Wall St., New York.

State of New York, United States of America, *ss.*

On this day, the thirteenth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, at the request of the Bank of New York, I, William D. Waddington, notary public, duly admitted and sworn, dwelling in the city of New York, did present the original bill of exchange hereunto annexed, to a clerk in D. Wickham's office, 42 Wall street, inquiring for the acceptor, and demanded of him payment thereof, which he refused, saying that the acceptor resided out of town, and that he knew nothing of it. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer, acceptor, and indorsers of said bill of exchange, as against all others whom it may or doth concern, for exchange, re-exchange, and all costs, charges, damages, and interest already incurred and to be hereafter incurred for want of payment of the said bill of exchange. Thus done and protested in the city of New York aforesaid.

Afterwards, on the 5th day of October, 1843, a record was made in said court in said cause, in the words and figures following, to wit:

Thursday, October 5th, 1843.

JOSEPH S. HULL
v.
ISAAC GALLAND. } Assumpsit.

On this day came said plaintiff, and exhibited and showed in open court a power of attorney duly executed for that purpose by the

said defendant, waiving the issuing of process, and confessing judgment in favor of the said plaintiff in the sum of nine hundred and ninety-four dollars. Therefore it is considered by the court that the said plaintiff have and recover of the said defendant the sum of nine hundred and ninety-four dollars damages, and his costs in this behalf expended, and that execution issue.

Afterwards, on the 6th day of March, A. D. 1845, a writ of execution issued from the office of the clerk of said court in said cause, which, together with the fee bill and indorsements, and sheriff's return thereon, read as follows:

Territory of Iowa, Lee County, *ss.* United States of America.

To the Sheriff of said County, greeting.

You are hereby commanded to cause to be made of the goods, chattels, lands, tenements, and hereditaments, and any title or equitable right to lands, whether under a certificate from any land office, or a title bond from any person for a warrantee deed, or any rights whatever to the possession of lands in your county (except such as the law exempts), of Isaac Galland, the sum of nine hundred and ninety-four dollars damages, and the sum of five dollars and fifty cents costs of suit, which by the judgment of the District Court for said county, at the October term thereof, A. D. 1843, Joseph S. Hull recovered against the said Isaac Galland in an action of assumpsit, together with interest thereon at the rate of six per cent. per annum, from 5th day of October, A. D. 1843, until paid; and also that you cause to be made as aforesaid the further sum of one dollar and eighteen cents, the costs and charges that have accrued on said judgment since the rendition thereof, together with all legal costs that may accrue by virtue of this writ. And have you said sums of money at the office of the clerk of said court in seventy days after the date hereof, to render up to those to whom it is due according to law, and have you then and there this writ, with your doings thereon. Hereof fail not at your peril.

Witness the Hon. Charles Mason, judge of our said court, [L. S.] with the seal thereof hereunto affixed, at West Point, this 6th day of March, A. D. 1845.

JOEL C. WALKER,
Clerk of said Court.
By J. G. WALKER,
Deputy.

Fee Bill. Clerk's Fees.

J. S. HULL
v.
ISAAC GALLAND.

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I hereby certify, that the foregoing is a true copy of the fees in said suit. Witness my hand and seal of said court, this 6th day of March, A.D. 1845.

[L. S.] JOEL C. WALKER,
Cl'k of D. C.
By J. G. WALKER,
Deputy.

Indorsement: Judgment obtained October 5th, A.D. 1843. Contract previous to the valuation law. J. C. Walker, clerk; by J. G. Walker, deputy.

No property found, July 17th, 1845.

Mileage, $2 50
Serving, 50 } $3 00

JAS. L. ESTER,
Sheriff of Lee County.

Afterwards, on the 6th day of March, A.D. 1847, a writ of execution, issued from the office of the clerk of said court in said cause, which, together with the fee bill and indorsement and sheriff's return thereon, are as follows:

State of Iowa, to the sheriff of Lee County, greeting:

You are hereby again commanded to cause to be made of the goods, chattels, lands, tenements, and hereditaments, and any title or equitable right to lands, whether under a certificate from any land office or a title bond from any person, for a warrantee deed, or any right whatever to the possession of lands in your county (ex-

cept such as the law exempts), of Isaac Galland, the sum of nine hundred and ninety-four dollars damages, and the sum of five dollars and fifty cents costs of suit, which, by the judgment of the District Court for said county, at the October term thereof, A.D. 1843, Joseph S. Hull recovered against the said Isaac Galland, in action of assumpsit, together with interest thereon, at the rate of six per centum per annum from the 5th day of October, A.D. 1843, until paid; and also, that you cause to be made as aforesaid, the further sum of six dollars and fifty-five cents, the costs and charges that have accrued on said judgment since the rendition thereof, together with all legal costs that may accrue by virtue of this writ, and have you said sums of money at the office of the clerk of said court, in seventy days after the date hereof, to render up to those to whom it is due according to law, and have you then and there this writ, with your doings thereon. Hereof fail not at your peril.

Witness, the Hon. Charles Mason, judge of our said court,
[L. S.] with the seal thereof hereunto affixed, at Fort Madison, in said county, this sixth day of March, A.D. 1847.

R. W. ALBRIGHT,
Clerk of said Court.

Fee Bill. Clerk's Fees.

J. S. HULL
v.
ISAAC GALLAND.

Ent. suit without process, 25; rules and motions, 38, .			$0 63
Issue joined, 13; docketing, 12; on cal. 13; app., 25, .			62
Ent. not provided for, 25; taxing costs, 25; on docket, 18,			68
Signing final record, 13; sat. on R., 12; sat. on judg., 6,			31
Ent. judgment, 50; fee bill (2), 25; entered ex. and ret. 12,			88
Issuing ex., &c., $1; alias, $1, ...			2 00
			$5 12
Jury or docket fee, ...			2 50
Sheriff's fees, Wm. Stotts op. C. and App., . .	$0 25		
" " Mileage, . . .	2 50		
" " Serving, . . .	50		3 25
			$10 87

I hereby certify, that the foregoing is a true copy of the fees in said suit.

Witness my hand and seal of said court, this 6th day of
[L. S.] March, A.D. 1847.

R. W. ALBRIGHT,
Clerk of said Court.

Indorsements: Judgment obtained October 5th, 1843. Contract previous to valuation. R. W. Albright, clerk.

The within execution is returned not satisfied; the defendant hath no property by which any part of the within execution can be made.

PETER MILLER,
Sheriff of Lee County, Iowa.

May 15th, 1847.

Afterwards, on the 30th day of June, A.D. 1851, a writ of execution issued from the office of the clerk of said court, in said cause, which, together with the fee bill and indorsements, and sheriff's return thereon, reads as follows:

State of Iowa, Lee County, *ss.*

To the Sheriff of said County, greeting:

In the name of the State of Iowa, you are hereby commanded, as you have often heretofore been commanded, to be made of the goods, chattels, lands, tenements, and hereditaments, and any title or equitable rights to lands, whether under a certificate from any land office, or a title bond from any person, for a warranty deed, or any right, whether to the possession of land in your county (except such as the law exempts), of Isaac Galland, the sum of nine hundred and ninety-four dollars damages, and the sum of five dollars and fifty cents costs of suit, which, by the judgment of the District Court for said county, at the October term thereof, A.D. 1843, Joseph S. Hull recovered against the said Isaac Galland, in an action of assumpsit, together with interest thereon, at the rate of six per centum per annum, from the 5th day of October, A.D. 1843, until paid; and also, that you cause to be made as aforesaid, the further sum of nine dollars and thirty-seven cents, the cost and charges that have accrued on said judgment since the rendition thereof, together with all legal costs that may accrue by virtue of this writ; and have you said sums of money at the office of the clerk of said court, in seventy days after the date hereof, to render up to those to whom it is due, according to law; and have you then and there this writ, with your doings thereon. Hereof fail not at your peril.

Witness the undersigned, clerk of said court, with the seal [L. S.] thereof hereunto affixed, at Fort Madison, in said county, this 30th day of June, A.D. 1851.

P. H. BABCOCK,
Clerk of said Court.

By S. A. JAMES,
Deputy.

J. S. HULL
v.
ISAAC GALLAND.

Fee Bill. Clerk's Fees. J. C. Walker, clerk.

Ent. suit without process, 25 c., rules and motions, 38 c., .	$ 63
Issue formed, 13 c., docketing, 12 c., on cal., 13 c., on app., 25 c., ...	62
Ent. not provided for, 25, taxing cost, 25, on judge docket, 18, ...	68
Signing of final record, 13, sat. on R., 12, sat. on judg., 6,	31
Ent. judg't, 50, fee bill, 25, ent. ex. 8, return, 12, . .	88
Issuing execution, &c., 1 00, ...	1 00
	$4 12

R. W. Albright, clerk, issuing alias execution fee bill, .	$1 00
P. H. Babcock, " pleuries " " .	1 00
Jury fee or docket fee, ...	2 50
Sheriff's fees, William Stotts, open court and app., 25, mileage, $2 50, serving, 50, ...	3 25
James C. Estes, sheriff's fees fi. fa., ...	3 00
	$14 87

State of Iowa, Lee County, *ss.*

I hereby certify that the above is a true statement in substance of the fees in the above cause.

Witness my hand and the seal of the District Court of said county at Fort Madison, in said county, June 30th, A.D. 1851.

P. H. BABCOCK,
Clerk of said Court.
By S. A. JAMES,
Deputy.

Indorsements: judgment obtained Oct. 5th, 1853, contract prior to the valuation law.

P. H. BABCOCK,
Clerk.
By S. A. JAMES,
Deputy.

This is to certify, that in pursuance of the foregoing execution directed to me, I did, on the 24th day of July, in the year one thousand eight hundred and fifty-one, levy upon the following real *real* estate belonging to and as the property of the defendant in said execution, as hereinafter described, there being no personal property of

said defendant within any county subject to execution, and that after having said property advertised for four successive weeks in a weekly newspaper printed in said county, and after having posted up in more than three of the most public places in said county of Lee, one of which was at the place where the last District Court was held, notices of the time and place of selling said real estate more than four weeks before the day of said sale, and having also posted up in each township, in which such lands lie, 3 public notices of the time and place of said sale, I did in pursuance of said notices proceed to sell, and by authority of said execution, did sell at the front door of the clerk's office of the District Court of Keokuk, in said county of Lee, beginning on the 25th day of August, 1851, and continuing said sale until the 26th day of August, 1851, between the hours of ten o'clock in the A. M. and four o'clock, P. M. of those days, the eight undivided forty-eighth parts of each of the following lots, tracts, and parcels of land, situate and lying, and being in the half-breed Sac and Fox reservation in said county of Lee, and State of Iowa, as the interest, legal and equitable, of said defendant in said execution, and all the interest, legal and equitable, and all the rights, titles, and estate, legal and equitable, subject to execution, which said defendant in said execution had in and to the said lots and tracts of lands, to the persons, and for the sums, as follows, to wit:

(Note by clerk. No lands are here inserted save those containing the lands in controversy.)

No. of share.	Description.	Sec.	Town.	Range.	To whom sold.	Am't.
48	South ½,	14	65	5	Clagett & Dixen,	$4 00
56	Frac. N. W. ¼,	25	65	5	do	1 00
84	E. ½, N. E. ¼,	26	65	5	do	1 50
93	S. E. ¼,	23	65	5	do	25

And I do further certify that I sold the same to the persons, and for the same sums as above-mentioned, respectively set opposite said tracts and lots of land, and that said sales amounted, in the aggregate, to $1595 05.

ISRAEL ANDERSON,
Sheriff, Lee Co.

KEOKUK, 15th September, 1851.

State of Iowa, County of Lee, *set.*

I, Erie J. Leech, clerk of the District Court in and for said county, do hereby certify that the above and foregoing pages, numbered from one to forty-seven inclusive, contain a full, true and complete transcript of the record and proceedings, including all executions and the returns thereon, and all other papers in the cause wherein Joseph S. Hull is plaintiff, and Isaac Galland is defendant, as fully and com-

pletely as the same now appear from the records and files of my said office.

In testimony whereof, I hereto set my hand, and affix the [SEAL.] seal of said court at Fort Madison, the 13th day of August, A.D. 1855.

E. J. LEECH,
Clerk, D. C.
By J. VAN VALKENBURG,
Deputy.

And also a sheriff's deed, executed to plaintiff upon above sale, which is in the words and figures following, to wit (excepting all the description of lands, save the lands in controversy, are to be omitted by agreement of the counsel in this case, they being the same as sold by the sheriff's return, heretofore cited):

This indenture, made this thirty-first day of August, in the year one thousand eight hundred and fifty-two, between Alexander R. Wheat, sheriff of Lee county, State of Iowa, party of the first part, and Charles Clagett, of Prince George's county, in the State of Maryland, party of the second part, witnesseth, whereas, by virtue of a pluries fieri facies, or writ of execution, issued and directed to Israel Anderson, the sheriff of said Lee county, by the clerk of the District Court of said county, at Fort Madison, in favor of Joseph S. Hull, and against Isaac Galland, upon a judgment thereupon rendered between said parties, the said Anderson, sheriff as aforesaid, did, on the day of July, A.D. 1851, levy upon the several tracts, pieces, lots, and parcels of land hereinafter described, as follows, to wit: the eighth undivided forty-eighth part of each of said pieces, lots, and parcels of land, situate, lying, and being in the half-breed Sac and Fox reservation, in the said county of Lee, and State of Iowa, as the interest, legal and equitable, of the said Isaac Galland, or so much interest, legal and equitable, as the said Isaac Galland may have in the same, and all of said Isaac Galland's right, title, and estate, subject to execution, in and to said lots, pieces, and parcels of land. And whereas, after giving due and legal notice of said sale, by posting up, in at least three public places of said county, one of which was at the place where the last District Court in and for said county was held. Also by three publications of said notice in the Des Moines Valley Whig, a weekly newspaper published in said county, the first of which notices were posted up as aforesaid for the period of more than four weeks, and that said last notice of publication was made two weeks previous to the time of sale; also by posting up three printed notices in each township in which any portion of said lands were situated at least three weeks previous to the time of sale, each of which notices contained the time and place of selling said property, as has been represented, and believed by me to be true. The said Anderson, sheriff as aforesaid, did, in pur-

suance of said several notices, and at the time and place therein appointed, on the 25th and 26th days of August, in the year 1851, proceed to sell and did sell the several tracts, pieces, and lots of land hereinafter described, for the sums respectively set opposite them, to Messrs. Clagett & Dixon, of Keokuk, Iowa. And whereas said sheriff did execute and deliver to said Clagett & Dixon certificates of such purchases so made, stating that said purchasers, or their assigns, would be entitled to a deed in twelve months from the date thereof, unless redeemed according to law: And whereas, the said Anderson has ceased to be sheriff of Lee county, and the said Wheat is his lawful successor in office, the party of the first part. And whereas, more than one year has elapsed since said sale and said certificates, and no person having redeemed same, or any portion thereof: Now this indenture witnesseth, that the said party of the first part, as sheriff as aforesaid, and as the successor in office of the said Anderson, and by virtue of such office, doth hereby grant, bargain, and sell, and convey unto Charles Clagett aforesaid, who is the assignee of said Clagett & Dixon, of said certificates, and to his heirs and assigns, forever, for and in consideration of the sums respectively set opposite the several said tracts, parcels, and lots of land, so sold to said Clagett & Dixon, as aforesaid, the receipt of which is acknowledged on said execution, all the right, title, interest, and estate of said Isaac Galland, legal and equitable, as the same was levied upon and above described, in and to said tracts, pieces, and lots of land lying and being in said reservation, in said county of Lee, and State of Iowa, and which are particularly described as follows:

No. of Share.	Description.	No. of Sec.	Township.	Range.	Price.
48	South ½	14	65	5	$4 00
56	Frac. N. W. ¼	25	65	5	1 00
84	E. ½. N. E. ¼	26	65	5	1 50
93	S. E. ¼	23	65	5	25

To hold and to have the said premises, and all the right, title, and interest, and estate, legal and equitable, and the eight forty-eighths thereof, unto the said Charles Clagett, his heirs and assigns, forever, as fully and completely as the same were owned and held by the said Isaac Galland, and levied upon and sold by virtue of said judgment execution against said Galland.

In witness whereof I have hereunto set my hand seal on the day and year first above written.

ALEX. R. WHEAT, [SEAL.]
Sheriff Lee Co., Iowa.

Signed, sealed, and delivered
in presence of
JAMES M. REID.

State of Iowa, Lee County, *ss.*

Be it remembered, that on this 31st day of August, A.D. 1852, before me, James M. Reid, a notary public in and for the county of Lee and State of Iowa aforesaid, personally appeared Alexander R. Wheat, sheriff of said county and State, to me personally known to be the identical person whose name is affixed to the above and foregoing deed as grantor, and acknowledged the same to be his voluntary act and deed.

In witness whereof I hereunto subscribe my name and
[L. S.] affix my notarial seal of office at Fort Madison, the day and year aforesaid.

JAMES M. REID,
Notary Public.

(Indorsement): Filed for record August 31st, 1852, at 4 o'clock P.M., and duly recorded in deed book No. 13, page 107.

ROBERT McFARLAND,
Recorder.
By HERMAN F. STEMPEL,
Deputy.

To the admission of which in evidence defendant objected, on the ground that Marsh, Lee, and Delavan were the sole owners under said partition decree, and that Isaac Galland had no legal title in said real estate, or any portion thereof, upon which said judgment of Joseph S. Hull could operate as a lien, or which could be sold by execution, and for other reasons, and the court sustained said objection of defendant, and excluded said judgment, record and subsequent proceedings, and said sheriff's deed aforesaid, as affording no evidence of title; to which ruling of the court the plaintiff excepted. It was admitted the defendant was in possession of the property sought to be recovered, and that he claimed title under deeds executed by Marsh, Lee, and Delavan, the three trustees named in said drawings, who conveyed, by virtue of said drawings, in said decree of partition, as trustees of the New York Company aforesaid. This was all the evidence offered or introduced in the case, whereupon the court instructed the jury that plaintiff had shown no title to said property, or any portion thereof, and that they must find for the defendant; and the jury did accordingly find for said defendant; to all which rulings and instructions of said court said plaintiff excepts, and prays that this, his bill of exceptions, may be allowed, signed, and sealed; which is done.

J. M. LOVE, [SEAL.]
Judge, &c.

$90 50.

I, J. C. Burns, clerk of the District Court of the United States for the District of Iowa, hereby certify that the foregoing is a true copy of the record in the case of Charles Clagett *v.* David W. Kilbourne, as fully and completely as the same is and remains of record in the clerk's office of said court, at Keokuk, in the southern division of said district.

In testimony whereof I have hereunto signed my name, and affixed the seal of said court, at Keokuk, in said district, this 9th day of November, A.D. 1860, and of the Independence the 85th year.

[SEAL.]

J. C. BURNS,
Clerk D. C. U. S.
By A. T. WALLING,
Deputy.

Copy of Original Appeal Bond.

Know all men by these presents, that we, Charles Clagett, of Upper Marlborough, Prince George's county, Maryland, Thomas W. Clagett, of Keokuk, Lee county, Iowa, and Peter Eichar, of same place, are held and firmly bound unto David W. Kilbourne in the full and just sum of five hundred dollars, to be paid to the said David W. Kilbourne, or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 26th day of May, in the year of our Lord one thousand eight hundred and sixty.

Whereas lately, at a term of the United States District Court for the Southern Division of Iowa, held at Burlington, on the 17th day of May, A.D. 1858, Charles Clagett, of the State of Maryland, and David W. Kilbourne, of the State of Iowa, judgment was rendered against the said Charles Clagett, and the said Charles Clagett having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said David W. Kilbourne, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now the condition of the above obligation is such, that if the said Charles Clagett shall prosecute said writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

CHARLES CLAGETT. [SEAL.]
THOS. W. CLAGETT. [SEAL.]
P. EICHAR. [SEAL.]

Approved by

J. M. LOVE,
Judge U. S. Court.

Indorsed: Filed May 26, 1860. J. C. Burns, clerk, by A. T. Walling, deputy.

United States of America, *ss.*

The president of the United States, to the honorable the judge of the District Court *Court* of the United States for the District of Iowa, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which in the said District Court, before you, between Chas. Clagett, plaintiff, and D. W. Kilbourne, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, we are willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington the first Monday of December next, in the said Supreme Court to be then and there held; that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct their error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Roger B. Taney, chief justice of the said Supreme Court, this 5th day of December, in the year of our Lord one thousand eight hundred and fifty-nine.

Clerk of the Supreme Court of the United States.

Allowed by

J. M. LOVE,
Judge.

[SEAL.] Witness my hand and the seal of the District Court of the United States for the District of Iowa, in the southern division thereof, this 26th day of May, A.D. 1860.

J. C. BURNS,
Clerk.

Indorsed: Filed May 26, 1860. J. C. Burns, clerk.

United States of America.

To David W. Kilbourne, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Iowa, southern division, wherein Charles Clagett is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 5th day of December, in the year of our Lord, one thousand eight hundred and fifty-nine.

Attest, J. M. LOVE, [SEAL.]
Judge D. C. U. S. Dist. of Iowa.

May 26, 1860, this writ and notice came in my hands, and on the same day I served it on David W. Kilbourne, by reading the same to him personally, and gave him a copy of the same, according to law.

L. SUMMERS,
U. S. Marshal for Dist. of Iowa.
By J. Y. ANTHONY,
Deputy.

Fee,	$2 00
Copy,	25
Mileage,	6
	$2 31

Indorsed: Original notice. Filed May 26, 1860. A. T. Walling, deputy clerk.

I, J. C. Burns, clerk of the District Court of the United States for the District of Iowa, hereby certify that the foregoing is the original writ of error, the original citation and the marshal's return thereon, the original bond for costs to the clerk of the Supreme Court, and a copy of the bond for appeal in the case of Charles Clagett *v.* D. W. Kilbourne, lately pending in the aforesaid court, and now taken by writ of error to the Supreme Court of the United

States, as the same appears of file in the clerk's office of said court, at Keokuk, in said district.

[SEAL.] Witness my hand and the seal of said court, this 26th day of November, A.D. 1860.

J. C. BURNS,
Clerk.
By A. T. WALLING,
Deputy.

CHARLES CLAGETT, PLAINTIFF IN ERROR,

vs.

DAVID W. KILBOURNE, DEFENDANT IN ERROR.

RIGHT.

PENDING IN SUPREME COURT

OF

UNITED STATES.

ARGUMENT OF GEO. C. DIXON, FOR PLAINTIFF IN ERROR.

KEOKUK, IOWA:
PRINTED AT THE "DAILY JOURNAL" OFFICE.
1860.

STATEMENT OF CASE.

THIS was an action of right, commenced at the May term, A. D. 1857, in the District Court of the United States in the Southern Division for the State of Iowa, by plaintiff in error against defendant in error, to recover the posession of one undivided sixth part of several tracts of land in Lee county, State of Iowa, containing in all, about five hundred and forty-two six one hundredths (542 6-100) acres, and fully described in petition.

The suit was commenced by petition and summons. There was personal service and plea of general issue. On the 19th day of May, A. D. 1858, the cause was duly tried by a Jury, and under the instructions of the Court, verdict rendered in favor of the defendant in error.

Whereupon, said plaintiff made out his certain bill of exceptions which was duly signed and sealed by the Judge, excepting to the rulings made, and instructions given by said Court to the jury on the trial of said cause, which discloses the following state of facts:

That, on the trial, plaintiff in error first offered to introduce n evidence, a complete and certified record of the decree of partition and proceedings made by the District Court of Lee county, Iowa (then a Territorial Court), partitioning among the various parties the lands reserved by the United States Government. for the use of the half breeds of the Sac and Fox tribes of I

STATEMENT OF CASE.

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The suit was commenced by petition and summons. There was personal service and plea of general issue. On the 19th day of May, A. D. 1858, the cause was duly tried by a Jury, and under the instructions of the Court, verdict rendered in favor of the defendant in error.

Whereupon, said plaintiff made out his certain bill of exceptions which was duly signed and sealed by the Judge, excepting to the rulings made, and instructions given by said Court to the jury on the trial of said cause, which discloses the following state of facts:

That, on the trial, plaintiff in error first offered to introduce n evidence, a complete and certified record of the decree of partition and proceedings made by the District Court of Lee county, Iowa (then a Territorial Court), partitioning among the various parties the lands reserved by the United States Government, for the use of the half breeds of the Sac and Fox tribes of Indians, in a treaty made by the United States with said tribes of Indians, on the 4th day of August, A. D. 1824, which was admitted with out objection. Within this "half breed tract" thus "*reserved*," and a part thereof were the lands in controversy, and which by said partition proceedings were set off to Marsh, Lee, and Delevan, as a portion of Trustees in accordance with the answer and articles of association, filed and made a part of the record in this case.

And which said lands were drawn in Shares No 48. 56. 84. and 93. in said Partition Proceedings.

In this decree of partition, and partition proceedings (thus offered in evidedce by plaintiff in error), were contained the ararticles of association, of the said New York Company, dated October 22d, A. D. 1836.

These articles show that the Company was formed for the purpose of purchasing lands in the western country. The Company consisted of eight members, five of whom, to-wit: Joshua Aiken and Isaac Galland, of Illinois, and Samuel Marsh, Wm. E. Lee, and Edward C. Delevan, of the State of New York, were, by the articles of association, appointed Trustees for the Company, to carry out the provisions of the articles of said association.

By said articles, these five Trustees were to be invested with the legal title to all lands purchased, or to be purchased, by the the New York Company, as joint tenants and not as tenants in commmon---*in trust* for said Company, with the powers and duties stated in said articles of association.

Under these articles they purchased, with others, the lands in question, the legal title to which was vested in the said five Trustees as above stated, and when the partition suit was commenced. Marsh, Lee, and Delevan, a majority of said Trustees, appeared and set up the claims of the New York Company to a large portion of the land sought to be partitioned · and, in the decree of partition, the land in controversy was set off to "*Marsh, Lee, and Delevan, Trustees forrthe claimants under the articles of asssociation, dated Oct. 22d, 1836, filed in the case, and as Trustees for the persons interested under said articles.*"

Plaintiff next offered to introduce, in evidence, a certified copy of a judgment, obtained by Joseph S. Hull, Oct. 5th, 1843, in Lee County District Court, aginst Isaac Galland, one of the above named Trustees of the New York Company, and certified copies of three executions issued on said judgment, against said Isaac Galland, all duly authenticated, and which were admitted in evidence without objection. On the first two of these executions, there was the return of the Sheriff of Lee county, of "no property found." On the third execution, dated June 30th, 1851, was the return of the Sheriff, that, in obedience to the command of the writ, he had levied on and duly sold to Thos. W. Clagett and Geo. C. Dixon, under the co-partnership name of Clagett & Dixon, the land in controversy, as the interest of the said Isaac Gallland, legal and equitable, and had given a certificate of such sale to said Clagett & Dixon, according to law.

Plantiff in error next offered to introduce in evidence, a deed, dated August 31st, 1852, of the land in controversy, executed by the Sheriff of Lee county, Iowa, to Charles Clagett, plantiff

in error, he being the assignee of the certificate of sale given the previous year, to Clagett and Dixon, and entitled to receive the deed---the year for the redemption of said property from said Sheriff's sale, having expired. Plaintiff here rested.

"To the admission of which, in evidence, defendant in error objected on the ground that Marsh, Lee, and Delevan were the *sole* owners under said partition decree, and that Isaac Galland had no legal title in said real estate, or any portion thereof, upon which said judgment of Joseph S, Hull could operate as a lien, or which could be sold by execution, and for other reasons, and the Court sustained said objection of defendant, and excluded said judgment record and subsequent proceedings, and said Sheriff's deed aforesaid, as affording no evidence of title, to which ruling of the Court the plantiff excepted. It was admitted the defendant was in posession of the property sought to be recovered, and that he claimed title under deeds executed only by said Marsh, Lee, and Delevan, the three Trustees named in said decree of partition, and not otherwise.

This was all the evidence offered or introduced in the case, whereupon, the Court instructed the jury that plaintiff had shown no title to said property, or any portion thereof, and that they must find for the defendant; and the jury did accordingly find for said defendant. To all which rulings and instructions of said Court, said plaintiff excepted, and his bill of exceptions duly allowed and signed by the Court.

Upon this brief statement of the facts, as appears from the record, this case is brought to this Court.

ARGUMENT AND AUTHORITIES.

We claim title by virtue of *the articles of association* made a part of the answer of Marsh, Lee, and Delavan, and a part of the record, and, also, *by the decree of partition.*

By first article of the articles of association, it was "mutually agreed and understood" by and between the parties thereto, that Isaac Galland was to have and own eight undivided forty-eighth parts, or one-sixth of "all the interest and right of the said parties in and to the premises already purchased, or hereafter to be purchased in pursuance hereof." These articles were dated 22d day of October, A D. 1836, and filed in the partition suit on the 8th day of May, A. D. 1841, as part of the answers of Marsh, Lee, and Delevan. By same article, it is provided that said Marsh, Lee, and Delevan, together with said Galland and one Aiken, were appointed Trustees to hold the legal title to said lands as *joint tenants and not as tenants in common, in trust, etc.*

On 6th day of October, A. D. 1841, final decree of partition and confirmation was rendered under the statute of the Territory of Iowa, of 1839, regulating partitions.

On the 5th of October, 1843, Joseph Hull recovered a judgment against said Galland for nine hundred and ninety-four dollars and costs in the same Court, in which the partition was had. Under this judgment, upon a *pluries fi. fa.*, issued in June 1851, the interest and title of Galland in these tracts of land were regularly sold, and Sheriff's deed made: and it is under this Sheriff's sale and deed, that plaintiff claims title to one undivided sixth of the land now sued for.

The validity of that judgment, and the regularity of the proceedings under it, are not questioned.

That this judgment was a lien upon the *legal estate* of Galland, is not and cannot be controverted, and that it was, also, a lien upon his *equitable estate*, has been expressly decieed in case of 2 Clark's Iowa Rep., 381–2, in the Supreme Court of Iowa.

The first and prominent inquiry is, concerning the title and interest which Galland had in said lands, in October 1843, when judgment was rendered against him.

And, first, under the articles of asssociation: There can be no doubt he held, *at least*, the equitable title to one undivided sixth of the lands and, also, was clothed, in connection with his co-trustees, with the comlpete legal title to the whole thereof, in trust, etc.

Now, we say the judgment was a lien upon his *equitable* estate by the laws of Iowa, and upon authority.

The act regarding judgment liens in force at that time, says that "judgments in the District and Supreme Courts of this Territory, shall have the operation of, and shall be *liens* on the *real estate* of the person or persons against whom such judgments may be rendered from the day of rendition thereof, in the county in which judgments may be rendered." Stat. of Iowa, 1843, p. 271, 66.

Real estate, upon which judgments are liens, is defined as follows: "The word 'land' or 'lands,' and the words 'real estate' shall be construed to include *lands, tenements, and hereditaments*, and *all the rights thereto* and *interests* therein;" and it is, also, provided in the same section, that this rule shall be observed in the construction of *all statutes*, unless such construction would be inconsistent with the manifest intent of the Legislature, or repugnant to the context of the same statute. Stat. of 1843, p. 573 to '5.

In January, 1846, another law concerning judgment liens was passed, as follows:

"SEC. 1. No judgment in the District Court, in any county in this Territory, shall be a *lien* upon the *equitable* estate of the defendant in real estate. *Provided*, said equitable interest does not appear of record in the county wherein said real estate is situated.

SEC. 2. No such judgment shall be a lien upon the real estate of the defendant after the expiration of ten years from the rendition thereof." Laws of 1846, ch. 34, p. 33.

The last law but one, defining real estate, would seem to employ language broad enough to embrace every equitable estate —it would be exceedingly difficult to select stronger and more

comprehensive expressions than these, indicating an intention to embrace every species of interest and estate.

In 2 Comstock's Rep. p. 376, the statute of New York, authorized the Sheriff to attach "all the estate, real and personal, of such corporation," and directed him to "sell so much of the attached property, real and personal, as may be necessary."---Held. "That the statute in terms applies to an *equitable*, as well as a legal interest in land; to any estate, in a word, which may be denominated property."

This construction is evidently confirmed by the laws of 1846, before cited. It would seem to contemplate that, at the time of its passage, judgments were liens upon the *equitable estate*, whether appearing of record or not; and this act recognizes judgments as valid liens for ten years, on equitable estates apparent of record.

It is a strong and clear recognition of such an undsrstanding by the Legislature. Such is sound judicial construction. If it can be gathered from a subseqnent statute in *pari materia*, what meaning the Legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the constrnction of the *first statute*. 3 Howard's Rep. U. S. 564-5.

Such a subsequent statute, although not a judicial decision, and entitled to full weight and confidence as such, yet it is a legislative exposition and confirmation of the intention of the Legislature. 2 Howard's Rep. U. S. 191.

In construing a statute, a subsequent law upon the same subject, may be resorted to, for the purpose of ascertaining the intention, which, when discovered, must prevail---all statutes in *pari materia* being construed as one law. 4 Gill. & John. Rep. 128.

These authorities sufficiently establish our position concerning the construction of these statutes, and we think it cannot be denied judgments were liens on equitable interests before and after the laws of 1846.

The decision in the 1[illegible] Green's Rep. 132, may be referred to as adverse to our position.

The question before the Court, and the only question, so far as we are concerned, decided by the Court, was: "Will a judgment operate as a lien on a preemption right?"

The Court say: "By the language real estate of the person, we understand that the fee simple or estate of inheritance, must be in the person in order to have the judgment against him operate as a lien upon the land." They then proceed to define

the nature of a preemptive right as a mere temporary and conditional interest, unknown to the common law, and decide it was not subject to the judgment. They then made some further remarks *outside of the question before them*, intimating that a judgment will not operate as a lien upon a mere equitable estate.

Now, we say, the case did not call for, nor require such an expression of opinion, and what is remarkable, and shows the opinion was illy considered, is, that the Court did not have before them either the above definition of real estate given by the statute, or the law of 1846 before cited.

We insist, by the rules of law, decisions must be limited to the very point decided, when the judicial mind has been directed to it: their authority is co-extensive only with the facts on which they are made.

The case must call for the expression of such opinions. It must be necessary to the ascertainment of the right or title in question, nor will the Federal Court hold themselves bound by any part of an opinion not essential to the determination of the precise points submitted and in controversy, See 6 Mumford's Rep. 87, 94: 1 Comstock's Rep. 143; 6 Wheat R. 399 12 Wheat Rep. 333.

3 Howard's R. 292; 6 Howard's R. 612, and especially 16 Howard's R. 284-7. But whatever may be the effect of this decision, it has since been overruled, and the Supreme Court of Iowa in a well considered case has decided that judgments were liens upon equitable estates. Such is the established law at this day. See above case, 2 Clark's Iowa Rep. 381-2.

But *was there*, under the articles of association, any equitable estate in Galland? or, if there was, was it not *merged* in the legal estate, held by him as one of the Trustees who were invested with the complete legal title as *joint tenants in trust*, and not as *tenants in common*? We think there was a *complete merger* to the extent of the equitable interest of Galland, to-wit: one undivided sixth part of the whole, and will proceed to give our reasons and authorities for such conclusion. Now, Galland was a *joint tennant;* he with the others were seized *per my et per tout*, and each had the entire posession of every part, and of the whole. Each had the undivided moiety of the whole, not the whole of an undivided moiety. Hence the seizure and posession of one was that of the other also. 2 Cruises Dig. title 18, chap. 1 sec. 20, chapter 2, sec. 9. 1 Hill abr. 565 sec. 22. If the whole equitable estate had belonged to him and he had come into possession of the whole legal estate, merger would have followed unless a different intention was manifested for purposes of justice,

This will be conceded. And so *vice versa*, if he held the legal, and subsequently became possessed of the equitable estate, the same result would follow. Now, it is said, that joint tenants owing to the peculiarity of their seizins and their relations to each other, are for the purpose of merger, considered generally as having only aliquot proportions, and this peculiarity of their tenancy that they hold *per tout* would apply as forcibly in favor of a merger of the entireity in the case of a grant from the tenant for life to *one* of *two* joint tenants of the reversion in fee as in that of a term of years. See 6 Greenl. 1 cruise Title 39 sec. 24.

1 Instr. 182 b. 2 Rep. 60. 3 Preston conv, 88, 89, 478.

Where a person having the legal title, becomes entitled to the equitable estate in a part of the land, there may be a merger *pro tanto*, 7 Bacons abr. Uses, and Trusts A. p. 138. Ib. Title, Lease R. page 204 Cook vs. Fountain.

Merger is coextensive with the interest merged, as in the case of joint tenants and tenants in common; and it is only to the extent of the part in which the owner has two several estates. An estate may merge for one part of the land and continue in the remaining part of it 4 Kents Com. 101.

At law, the doctrine of merger will operate, even, though one of the estates be *held in trust*, and the other beneficially by the same person, or both the estates be held by the same person on the same or different trusts. 4 Kents Com. 102, 1 P. William, R. 41. 3 Prest. Conv, 314-5 557-8.

Greenl. Cruise, Title 39 Merger 555, note 1.

In the case of James vs, Morey, 2 Cowen R. 246, this question is much discussed.

Woodworth Jus. says, "I have not met with any case where "the question of merger was raised on the union of part of the "equitable and legal interest, yet, *do not perceive any valid ob "jection to allow it pro tanto.* Id. 284.

"It was agreed for the appellant, that the doctrine of merger "is not applicable to this case, because the whole legal and equit- "able estates in the whole subject matter of the mortgage, even "never united in the same person. It were obvious that there "was no merger as to that portion of the mortgaged premises in "which Labin acquired an equitable interest because he had no "legal estate into which his equitable interest could sink. But "I have been unable to realize the weight of the consideration "which were drawn from this circumstance against a merger as "to the residue."

Per Sutherland Id. 301, which See as it speaks] fully on this point.

One more case on this question and we are done with it. In case of Doyxdalis appeal 3, Harris R. 457, 461, [illegible] trustee with an undivided beneficial interest. T
"Unlike the beneficiaries in 13, [illegible] Rep. 333
"R. 188 who had only an interest *in the execution*
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Our conclusions under this head are: 1st. That if there was an equitable estate which never merged, it was under the laws of Iowa and the decisions referred to, subject to the lien of the judgment. 2d. That it did merge pro tanto into the legal estate held by Galland and that as purchasers under that judgment we took all the legal title to one undivided sixth of said property. And 3d. That we hold under the sheriff's sale and deed all the estate legal and equitable which Galland had in said property whether there is a merger or not. If no partition ever had taken place we do not believe these positions would have been controverted, nor any court have gainsaid them.

So much for the articles of association and our claim under them, independent of the partition proceedings.

Did these proceedings change the character of the title and interest of Galland? Did they divest him of both his legal and equitable estate? or did they, as we contend, merely separate by metes and bounds the estate held by the trustees from all other estates held in common with them in the reservation partitioned, leaving them *among themselves* in precisely the same condition, clothed with the same attributes and powers and subject to the same trusts and conditions as they were before, in regard to the laws and lots thus partitioned and allotted to them Let us examine these questions very fully. We say, 1st. The record of partition nowhere discloses any fact alleged, issues made up or any intention in any way to change the trustees or the character of the trusts under the articles of association. We will look at the record of partition.

On the 14th of April 1840, Spalding et al, filed their petition

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in the District Territorial Court of Lee Co. Iowa, for partition of the half breed reservation under the statute of Iowa of 1839, regulating partitions. See statute of Iowa of 1843, 468–66.

This statute conferred statutory powers upon the Court. Its whole provisions were special and of a character unknown to the common law. This made the Court for this purpose, one of special statutory jurisdiction. It was bound by the provisions of the partition act, and could not in this proceeding mingle its statutory with its general powers. It posessed only the powers conferred upon it by the statute itself The Court itself was one of limited jurisdiction, a Territorial Court existing by virtue of the organic law, and invested with this statutory authority over partitions, and therefore could not mingle the two authorities.

This point was elaborately considered in 8 Howard's R. U. S. 536, where the Court say, "In such cases the Court will not deviate from the letter of the act, nor make an order partly founded upon its original jurisdiction, and partly upon the statute.— In other words, it cannot counfound its original jurisdiction in a suit with the powers it may be authorized to execute by petition, *either in a public act giving statutory jurisdiction* to the Court to be exercised summarily upon petition or in a private act providing for relief in a particular case which is to be carried out by the same mode of procedure.

The Doctrine was again examined and clearly affirmed in 9 Howards Rep. U. S. 348–9 and see also 2 Howards Rep. U. S. 58–60.

And when a Court acts by virtue of a statutory power, it becomes for that purpose a Court of special jurisdiction, although it be, in fact, one of general jurisdiction. See above authorities and 7 Hill's N. Y. R. 20. Wendl. R. 154 647, 8 Cowan R. 361, 3 Comstock's R. 523. 7 John. R. 541, 20 John. R. 269, 6 Cowan R. 571, 2 Denio R. 324, 2 Hill's N. Y., R. 14, and Webster vs. Reid, 11 Howard's R. 460, where this very question was decided, in regard to this very Court The Court then, in making partition acted as a Court of special jurisdiction by virtue alone of the above acts.

On the 8th of May 1841, the following answer was filed by Marsh, Lee and Delevan *three* of the *five* trustees in the above cause. We give it in full as it is short and shows clearly what was before the Court so far as we are concerned.

"The answer of Sam'l Marsh, Wm. E. Lee, and Edward C. Delevan, trustees under articles of association bearing date of 22 of October 1835 (herewith filed marked A.) for the persons interested in said association agreeably to the stipulations and provisions therein set forth, accordlng to their respective interests,

o the petition filed by Spalding and others against Autaya and others in this Co'rt for partition under the laws of this Territory, of the land mentioned in the petition by their attorney F. S. Key respectfully showeth, that they, and the persons in said association whom they represent, claim to be entitled to the shares and proportions of said half breed tract (the land mentioned in said petition) set forth in the annexed list or schedule of half breed claims, the proofs to their title to which, and the authentic copy of the conveyances by which the same are held are herewith filed and produced to the Court; and the defendants are willing that then said claims, and the claims of the said petitioners and of the other parties in this case, shall be decided, and adjudged by the Court and partition decreed according to law.' The articles of association were filed with the answer.

On the 8th of May 1841, on the same day the answer was filed, the Court made a decree awarding partition in pursuance of the prayer of the petition. The following extract from this decree will be sufficient so far as regards this case.

"It is thereupon by the consideration of the Court and with the consent of said parties, this 8th day of May 1841 ordered and adjudged that the claims and rights of said parties respectively to the undivided portions of the land mentioned and described in the said petition, amount in the whole to the number of 101 equal portions, that of these, the defendants Marsh, Lee and Delevan trustees for the claimants under the articles of association, dated 22 of October 1836, filed in this cause, and as trustees for the persons interested under said articles are entitled to 41 shares and five eights of a share.

The decree proceeds to confirm said shares in said parties—orders partition to be made in accordance therewith and provides that all other persons whatever shall be hereafter barred and concluded from any title or claim in said lands."

Commissioners to make partition were appointed who made their report on the 6th of October 1841 on which day said report was confirmed in accordance with such partition so made, in the following language: "It is further ordered, adjudged and decreed that the partition made by said report and which is to be perfected by the allotment of these shares be firm and effectual forever."

The above, we think, embraces all in the record connected with this question. Now, the answer of Marsh, Lee and Delevan simply asks as trustees under said articles to have the company's interests set off and partitioned, "for the persons interested in said association, *agreeably to the stipulations and provis-*

ions therein set forth and partition was made and confirmed accordingly as appears by the above statement.

By these articles, five trustees were appointed; Marsh Lee and Delevan above named and Isaac Galland and one Joshua Aiken. *But*, by the same article the power was conferred upon said five trustees, *or a majority of them*, and it was imposed upon them as a duty: "To cause the title to said lands and property to be thoroughly examined *and established in such form of proceeding* as they may be advised to be proper, *to protect the parties in interest* against any loss or question on account thereof" See article 3, sub. division 1.

Our observation is, then, That the *majority* of the Trustees had full power and authority to appear and defend in behalf of the *whole* Trustees, for the partition of the land as *between themselves and their beneficiaries, and of all other persons* interested.—This was authorized, expressly, by the stipulations and trusts in the articles themselves, and entirely consistent with the confidence reposed by the beneficiaries and the minority Trustees. It was merely the exercise of a power authorized by, and executed in the manner designated by the trust instrument itself; and, in no wise, adverse or hostile to any person connected with, or interested in, the character or execution of the trust. These proceedings sought no change in the relations, rights or title of the Trustees, or any one of them, as between themselves or their beneficiaries; no change or divestiture of the title in any manner; no antagonistic proceedings against any co-trustee, but simply a *separation* or partition of all their interests and rights as claimed under the articles, from those of all and every other person, in said property not interested in, or claiming under said articles. They desired their property to be designated by metes and bounds, and it was awarded them; and we say, they now hold this property so *separated and set apart* as a *divided, ascertained* interest, in precisely the same manner, clothed with exactly the same title, neither more nor less, and subject to the same trusts and limitations as they previously held the *undivided* and *unascertained* interests in said reservation.

When this decree of partitition became final and operative, the inquiry arises: What right and interest had Galland in said property so awarded and partitioned to said Trustees?

It is contended that Marsh, Lee, and Delevan being alone named as Trustees, that Aiken and Galland have lost, at least their legal title and relation as Trustees. Our reply to this position is, 1st, Galland had an *equitable* interest in one-sixth or eight forty-eighth parts, subject to the payment of his proportion of the purchase money and expenses—to be a *charge only* upon the first proceeds of the lands.

There ought to be no controversy here ; this estate is recognized by the articles filed as part of the answer, and all the parties, we insist, are *estoppel* from denying this one-sixth, so clearly and repeatedly declared in those articles.

The U. S. Supreme Court say : "The general rule of law is, that the recital of one deed in another, binds the parties and those who claim under them by matter subsequent. Technically speaking such a recital operates as an estoppel, which works on the interest in the land, and binds parties and privies—privies in blood, privies in estate, and privies in law. Between such parties the original lease need not, at any time, be produced. The recital of it in the release, is conclusive. It is not offered as secondary, but as primary proof, not as presumptive evidence, but as evidence that operates by way of estoppel, which cannot be averred against, and forms a muniment of the title." 6 Peter's Rep. 610–613, and 4 Peter's Rep. 1.

In these cases the law is fully considered, and it is said such recitals "work upon the interest in the land and create an estoppel which runs with the land against all persons in privity, under the releasors. It is as much a muniment of the title, as any covenant therein, running with the land." 4 Peter's R. 88.

We simply ask the application of this principle to the case as presented before the Court upon the recitals in the answer.

The result of the authorities seems to be, that whatever may be the form or nature of the conveyance used to pass real property, if the grantor sets forth on the face of the instrument, by way of recital or averment, that he is seized or posessed of a particular estate in the premises, and which estate the deed purports to convey, or what is the same thing, if the seizure or possession of a particular estate is affirmed in the deed, either in express terms or by necessary implication, the grantor and all persons in privity with him, shall be estopped from ever afterwards denying that he was so seized and possessed at the time he made the conveyance.

The estoppel works upon the estate and binds an after acquired title as between parties and privies. 11 Howard's Rep. 325.

And even on such an estoppel, it is well settled, an ejectment may be maintained. 2 Smith's Leading Cases, 511, and cases cited, and on page 515 of same authority, it is said, "Judgments *in rem* are conclusive as to nothing, which might *have not* been in question or was not material.

2nd. By said articles he has had in conjunction with his co-trustees, the entire legal title ; this is not controverted.

3d. The Court had no power in that statutory proceeding to mingle its *special* with its ordinary or general jurisdiction, as we have before stated.

Fourth, the Court had no power, under the statutes of partition, to act upon, or change the relative rights or duties of any one or more of said Trustees. No mention is made of such a power.—The act concerning partition, in regard to its judgments, says:

SEC. 35. "Upon the report of commissioners being confirmed, judgment shall, thereupon, be rendered that *such partition* be firm and effectual forever."

SEC. 36. "When all the parties in interest shall have been duly notified to appear and answer the petition, and the *judgment aforesaid* shall be binding and conclusive upon all persons whatsoever."

Such is the only judgment it can render in regard to the property, and the only effect it can give to it under the law; a simple judgment, awarding partition, is its only authority.

It is true that the Supreme Court of Iowa has decided that this decree in partition is conclusive evidence *per se*, of legal title. See 2d Greene's R. 94 to 119. We deny that this is good law; we deny that it is sustained by the statute itself or by any respectable authority. The only object of the statute was to secure to the tenant an *exclusive possession* of his share of the joint property. When no such possession can follow the judgment, no reason is shown for invoking the aid of the law. See 2 Ohio State R. 379. 1 Green's N. J. R. 271. 1 Sandf. Chy. R. 202. 8 New Hampshire Rep. 92, and 18 Howard's Rep. 297.

But, admitting for the purpose of this argument that such is the law, we still argue there is no adjudication of title out of the *whole trustees* as provided for in the articles themselves.

The application and consent to partition the premises and establish the title was, as we have shown, consistent with the power given by said articles to a majority of said Trustees.

No such *change*, nor *any* change in the Trustee articles or in the Trusteeship was ever sought, or prayed for by any party. No such relief or remedy was sought or prayed for in any of the pleadings. No such matter was ever brought before the Court or put in issue in any way. No decree or judgment was ever made to that effect.

The answer prays a division in accordance with the stipulations and conditions of the articles, and all subsequent proceedings were in subordination to those articles and trusts.

The *majority* of the Trustees having the power to appear in said suit, were not conducting any proceeding adverse to, or in hostility with any of the Trustees, or of the relative rights and powers existing between them.

Now to constitute a bar or estoppel, a judgment must have been rendered.

1st. By a Court of competent jurisdiction.
2d. Upon the same subject matter.
3d. Between the same parties.
4th. For the same purpose.

4 Howard's R. 497--8 in which case, arising upon an English Judgment upon a question of heirship, the Court say, 'That the English bill involved directly the question of heirship, and that nothing was contested is undoubtedly true, but it i equally true that no evidence was introduced by the complainants there to establish their title, nor was there had any adjudication upon the merits of their claim so that no equitable considerations are violated by our present judgment in any aspect that the evidence may be viewed." And See 4 Barb. N. Y. R. 457, 5 Denio R. 296. 11 Howards R. 325 7 Howards Rep. 216--7, 1 Greenl evid. sec. 523, 529, 530.

Nor is a judgment evidence of any matter which came collateraly in question, though within the jurisdiction of the Court, nor of any matter incidentally cognizable, nor of any matter to be inferred by argument from the judgment. 1 Greenl evid. sec. 528, 2 Smith's leading cases 525. 18 Howard's R. 302. We refer especially to this last case of 18 Howards R.297. Lessee of McCall vs. Carpenter et al as very full and conclusive on this point and other kindred ones and hope the Court will conform to it. In this case in concluding their opinion the Court say, "It may be, as we have already said, that these proceedings conclude the question of partition from afterwards being agitated, a question which it is not now necessary to decide; but we think it clear that they cannot conclude the title *even of a party to them* whom the proceedings themselves show, had no interest or concern in the question of partition."

We deny therefore that the partition record undertakes or shows any evidence of an intention to make any such change.

But we say, further, that neither the Court nor the Legislature could have made such a removal, even if they had undertaken to do so, unless upon proper cause shown and tried in Court.

As a general rule the jurisdiction to remove old trustees or appoint new ones, can only be called into exercise by means of a bill filed by and against all proper parties and praying for the desired relief. In all cases, the circumstances which render the new appointment necessary or proper must be stated; and the removal of the old trustees, when that forms part of the object of the suit, as well as the new appointment, and the directions for the execution

of the necessary conveyance should be prayed by the bill. Hill on trust. 280 279. 1 Bailey's Eq. 489. 2 Wheat. R. 330. 1 Barb. ch. R. 565. 6 John. chy. 160. 4 Vesey R. 592.

But this matter is most authoritatively disposed of in the Dartmouth College case, 4 wheat. R. 518, 624 when it was decided that property held by corporators in private trust, could not be changed by the Legislature as it wou'd violate a contract to appoint new trustees &c. Now we say, that the *cestuis que trust* in these articles selected their own trustees, conferred their own powers upon them, and no Legislature or Court could violate these agreements or trusts, without violating the obligation of a contract involving the rights of property. See 1 Curtis Com. sec. 239, 4 Wheat 655 to end of opinion when it is said by ch. J. Marshall.—"Between acting directly and acting through the agency of trustees and overseers, no essential difference is perceived. The whole power of governing the College is transferred from trustees appointed according to the will of the founder expressed in the charter, to the executive of New Hampshire." And it is further decided when the trustees in addition to a naked trust have an equitable or beneficial interest in the trust, it would make the case so much stronger and the contract so much more apparent and obligatory, 4 Wheat R. 653—4 664--5, Curtis Com. pge. 331--2.

And in 2d· G. Green's R. 168-9, the Court say, 'This judgment in partition had the effect of establishing title to these lands in those *whose interests were then passed upon and adjudicated*," and further they say, "We do not deem it necessary here to inquire how or why only three of the trustees of the company of the five named in the articles of association, are made parties in the judgment of partition, as trustees, to whom by the decision of the Court, the interests of the persons composing the company are committed. *The articles of association properly construed must solve the question here raised.*"

We think then we have established the position that the only effect of the decree of partition was to separate the company's lands from other lands and mark them out by metes and bounds. The rights, titles, relations and powers of the trustees and beneficiaries were precisely as they existed before, over the property thus awarded them. And now let us examine and see what were these rights.

These rights were an equitable interest merged in his (Galland's) legal title to one sixth of these lands. These views we have sufficiently discussed in a previous part of this argument.

Was not this interest subject to our judgment, to our levy and to our sale under it? We believe it was. Let us look at the authorities as regards the sale of a joint tenant's interest?

A levy and sale on execution of the interest of a tenant in common as specified by metes and bounds, passed his undivided portion within those boundaries. 6 Ham. R. 391. In this case the Court refer to White's Lesse, vs. Sayre 1-2 Ohio R. 302 as deciding this point and see accordingly. 1 Hill, Abr. 585 sec 44, 7 Ohio R 29, 4 Kent Com 368note 6.

In case 1-2 Ohio R. 303 it is said, that one of two or more joint tenants may convey his interest in the estate thus held, is a proposition too clear for controversy, and that by such conveyance such joint tenantcy is converted into a tenancy in common. So in 2 Gill and John R. 127-8 it was held where the legal estate to a tract of land was vested in two trustees as joint tenants that either could at law convey his undivided moiety in the land.

So in 1 Bibb's R. 510 it is held: If joint tenant can convey his interest or estate in the *whole* property thus held, he can also convey *his interest or estate* in a *part only*.

So, it was held, that an execution against one holding lands in joint tenancy cannot be extended on a *part of* the lands so holden, by metes and bounds, yet such execution it is said, is not wholly fruitless. 12 Mass R 348 and see Id 474. 13 Mass. R 57. 14 Mass. R. 404, 2 Pick. R 443.

The above were all cases where there was but one tract, and where the metes and bounds were arbitrary, being made by the deed itself without any recognition or sanction of the co joint tenants. Ours was sold by lots and lands as drawn and awarded in the decree of partition made by consent of all. See 12 Mass 353, 13 Id. 59.— The interest of a co distributee in land, may be levied upon and sold *before distribution* and the purchaser at the Sheriff's sale takes a title to the undivided share of the defendant.

Black vs. Steel 1 Bailey's R. 307.

So on a reversion or remainder 2 Halsteds R 180. 3 Yerger R. 437, 5 N. H. 416, 14 Mass. R 20, 13 Peters R. 464 and cases cited.

That an interest of a joint tenant in land is the subject of levy and sale under execution, See 13 Peters R. 474 2 Hill's S. Court R. 311, 2 Greenl. Cruise 366 sec. 55. 2 U. S. Dig. 329 sections 336, 341, 4 Kent Com 361, 264, 2 Prest. on abr. 65. 1 Hill abr. 563 sec. 45 10 Conn. R. 44. We would also refer to the following authorities as conformatory to these views. 3 Howard R. 441, 4 Id. 17, 22 Pick. R. 319-20 1 Cokes Littleton 193 B. sec. 304, 2 Greenl. cr. title 18, ch. 2 sec, 11, 12. 1 Hill abr. 583 sec. 42, 2 Harr. and John R. 421-5, and so in regard to personal property held in partnership, story on Partn. sec. 311, 312 Collyer on Part. sec 822 and note 2.

Our code says in levying an execution the sheriff must "execute the writ by levying on the *property* of the judgment debtor." sec. 1904.

The officers shall in all cases select *such property* and in *such quantities* as will be likely to bring the exact amount required to be raised as nearly as practicable." sec. 1903.

In the Mass. cases the Statute speaks of levying upon the *estate* of the debtor or part thereof, and not on part of the land. See 12 Mass. R. 348. "An *estate* in lands, tenements, and hereditaments signifies such interest as the tenant hath therein." 2 Bl. Com. 103 It is in this sense that the Mass. statute is construed, and it is such construction which forms the basis of all the Mass decisions. It has reference to the defendants title or interest in the realty and authorizes such *estate, title or interest* to be sold or a *part thereof*. It does not speak of *quantity* of property.

Our code limits the power of the officer to *quantity*, it has no reference to *title or extent* of *interest*.

He must also levy upon the *property* of the defendant, upon the *thing itself*.

We insist therefore that these distinctions create a broad difference, an impassable gulf between ourselves and the New England decisions.

Our execution then, was to be levied.

1st upon defendants *property* and 2 in such *quantity only* as would discharge the debt. We did levy on the real property of the defendant and that real property is defined to be, and include lands, tenements and herkditaments and all rights thereto and interests therein equitable as well as legal. Code sec. 26, division 8, and in same section, division 10, the word property includes real and personal property.

We did levy upon so much thereof, or in *such quantities* as were necessary to extinguish the debt and no more.

In the bill of exceptions, in this case, it was admitted that defendant was in posessession of the property in controversy, and, also, claimed title to same by virtue of a deed made by said Marsh, Lee, and Delevan, the three Trustees named in said partition, but whether executed before or after the date of our judgment does not appear; and the question arises, had those three Trustees power to convey Galland's title and interest in said property, without his assent or concurrence, so as to divest our lien upon said property—no matter whether that conveyance was made by themselves or by an attorney appointed by them. We propose to consider this aspect of the case upon general principles, and upon the stipulations and covenants of the articles themselves.

In deeds devolving a trust, the general and settled rule is, that all must unite in executing the power, otherwise it will be void. 2 Fonbl. Eq. 436, sec. 5; 3 U. S. Dig. 610, sec. 88; 7 Am. Com. Law 491–2; 2 U. S. Eq. Dig. 628, sec 401, 4 John. chy. Report 596, 6 John. Report 39, 14 John. Report 553, 8 Cowen R. 549, 553, 582–4; 3 Comstock's R. 396–408; 1 Comstock's R. 79; 12 Howard's R. 191.

When a person gave his estate to two Trustees for several purposes, and in case one died, the other to execute the same—the refusal of one prevented the other from acting during their joint lives. Wilies on Trustees 136.

As a general rule trustees have all equal power, interest and authority and cannot act separately as executors may, but must join in any sale, lease, or other disposition of the trust property.—13 Annl. Dig. 630 sec. 107 cites 2 Maryland, ch. Dec. 474. 3 Comstock's R. 396. 1 Selden R. 145,7. note, that case in 3 Com. R. overules case in 6 John. ch. R. 323.

Trustees must unite to pass *any title* to property jointly held by them. 12 Howard's R. 191, and case cited.

It is now well settled, that in matters of mere private confidence or personal trust, or benefit, the majority cannot conclude the minority. 4 John. ch. R. 596, and see also 2 Story's Eq. Jur. sec. 1290 and cases cited.

Lord Coke (Cokes Litt. 181. C) took the distinction "between public and private associations: and admitted that in matters of public concern, the voice of the majority should govern, because it was for the public good, and the power ought to be more favorably expounded, than when it was created for private purposes. In Viner (titl. authority B) we have several cases making the same distinction, and it is now well settled that in matters of mere private confidence or personal trust or benefit, the majority cannot conclude the minority." The chancellor continues—In Lloyd vs. Lanry 6 Vesey 773 there was a suit by three persons on behalf of themselves and all the other members of a lodge of Freemasons and Lord Eldon observed that if he considered them as individuals the majority had no right to bind the minority: one individual has as good a right to possess the property as any other, unless he can be affected by some agreement. 4 John. ch. R. 596-7.

So in case of Green vs. Miller, 6 John. R. 41 where five arbitrators were appointed and heard the case, but only four agreed upon the award made, held not binding.

The Court say, "No case has been cited by the counsel where this question has been directly decided I am, however, satified that, as a submission to arbitrators is a delegation of power *for a*

mere private purpose it is necessary that *all the arbitrators* should concur in the award, unless it is otherwise provided by the parties. In matters of public concern, a different rule seems to prevail, then the voice of the majority shall govern," and after reviewing several authorities the court say, "These cases, I think, warrant the conclusion that when the trust or authority delegated is for mere private purposes, the concurrence of all interested with the power is necessary to its due execution."

Again, in Sinclair vs. Jackson, 8 Cowan R. 543 it is said in a case strongly analogous to this, "Joint trustees must all join in executing the trust or power. And when *two* out of *three* trustees made a lease in the execution of their trust, held, *that no interest passed* by the lease, and this rule applies to trusts or powers *coupled with an interest*, as well as to mere naked authorities. Though a lease or conveyance by one who is joint tenant in his own right, may operate on his moiety, *the rule does not apply to joint tenants who are trustees.*"

So when three persons were authorized to estimate the expense of a public improvement and to assess the same upon the owners and occupants benefitted: and one of three persons was not consulted and did not act in making such estimate and assessment, held that the *proceeding was void, and that no title could be deduced through a sale* made for the nonpayment of such assesament. 3 Denio R. 594 appealed and affirmed in 1 Comstock's R. 79, and reaffirmed and put at rest in 1 Seldens R. 147.

So a sale of mortgaged lands by only one commissioner under a New York act is irregular and void. Both commissioners must be present and concur in the sale. Nor does a conveyance to the purchaser in which both commissioners subsequently unite, render the sale valid, 3 Comstock's R. 396.

So in case of 12 Howard's R. 193, assignment to two Trustees—sale by one of them, but no affirmance or ratification by the other—in speaking of act of agent, purporting to act for assignees, the Court say, "His act is ratified in writing by Thomas R. Hazard, one of the assignees. This is not sufficient. *Trustees must unite, to pass any title to property* jointly held by them." There being no ratification the Court proceed, "If it were necessary, therefore, to decide the case upon this point, we must hold that Almy (the purchaser), has failed to show a *valid title* from the assignees."

And to the same effect, see 2 Mary. Ch. Dec. 480, Hill on Trustees, 429, 428, and notes; 8 Watts & Serg. 405. So in Hill's Trustees, 691–2, and note, it is said, "A Trustee is not justified in delegating the power of sale to a stranger, although he may, doubtless, employ a solicitor or other agent to conduct

the usual details of the sale. But the agent's *authority* must be in writing, and *signed by all the Trustees.*" And see 10 Vesey R. 311, and 8 Cowen R. 582.

And a Trustee cannot delegate his power—for instance a power to sell. See 1 Hill's abr. 342, sec. 75, 5 Paige ch. R. 318; 1 McLean R. 199. 4 John. ch. R. 369; 3 Comst. R. 396, Story on Agency, sec. 39-42.

In Bacon's abr. Title "Authority," Division D., it is said, "One who has an authority to do an act for another, must execute it himself and cannot transfer it to another: for this being a trust and confidence reposed in the party, cannot be assigned to a stranger, whose ability and integrity were not so well thought of by him, for whom the act was to be done; therefore, an executor having authority to sell, cannot sell by attorney."

Without extending our examinations, the result of these authorities would seem to be—

1st. That in case of private trusts, all must unite in executing the trust, otherwise it will be void. The power is construed as a joint and not a several one. This doctrine is without exception, in the case of *naked powers.*

2d. When the power is *coupled with an interest,* the same doctrine is applicable. The only distinction I can find, is, 1st, it is irrevocable. And 2d, if a joint power, and one dies, the power survives and may be well executed by the survivors.

3d. That, if the trust involves personal judgment and discretion, then it cannnot be delegated.

4th. That admitting an attorney might be created yet he could only be lawfully authorized by a power executed by all the Trustees.

Such are the general doctrines applicable to trusts and to this case, unless there is something in the articles of association, changing the character of these trusts.

We concede the right of the parties to make their own agreements and covenants, and that we must look into the articles in order to ascertain the relations rights and duties existing between them. Upon the provisions contained therein, the nature and extent of the powers conferred, must be determined.

We will examine these articles as to whether judgment and confidence were required of the Trustees, and as to what were the objects of the association, and as to whether any power was given to the majority to sell, or appoint an attorney.

The articles, after a recital of the *past* and *future* purchase of lands, and that same should amount to 75,000 dollars provides, "Now, therefore, in consideration of the premises, and

in order to the more efficient, careful and advantageous management of the said property, and for the greater facility in obtaining the titles and ascertaining the quantity, of which by such purchase, the parties hereto may be entitled; and, also, in view of *dividing the premises* among and to the several persons, and parties who may be entitled to portions thereof, by virtue of these presents in fee simple, as tenants in common, the said parties covenant," etc. Such is the general purpose.

ARTICLE 1. Provides for the vestiture of the legal title in Trustees as joint tenants in trust for the persons interested according to their respective proportions.

ART. 2. This article is one *inter se* to advance proportionate amounts of purchase money, expenses and improvements, growing out of the trust property.

ART. 3. Confers specific powers on the *Trustees, or a majority of them.* 1st, to examine and establish the titles to said land "in such form of proceeding as they may be advised to be proper *to protect the parties in interest* from any loss or question on account thereof." 2d, to cause the land to be surveyed etc. 3d, to lay out sites for towns and cities, to have maps made and water power thoroughly examined.

4th, and the *said Trustees* (not a majority of them, but simply said Trustees), are hereby authorized to *sell and convey, from time to time, as they may find opportunity*, any part of the lands so purchased, on such terms as to payment and to take such securities for the purchase money, or any part thereof, as they shall think fit. 5th, and *the Trustees, or a majority of them*, are, also, authorized to make all contracts and do all lawful things and acts that may be *necessary* or *proper* to carry *into effect the objects of this agreement, and to promote the interest of the parties concerned*, in respect to the property purchased and every part thereof. 6th, to employ, substitute and authorize such attorney or attorneys, agents and clerks, as may be *necessary in executing the objects of this agreement*, and in the *care and management* of said property." There is, then, a provision for substitution of Trustee in case of death.

ART. 4. Provides, simply, for advances being a charge, and to be paid out of first proceeds.

ART. 5. That said Trustees will act in good faith, and for the best interests of all concerned.

ART. 6. "And it is mutually covenanted and agreed, also, that whenever the Trustees shall have received, or realized money enough from the sale and other disposition of the property, to pay up and satisfy the whole amount of the purchase money and improvements and interest thereon, over and above

the taxes, assessments and expenses of management, *the power of the said Trustees to sell said property, shall cease, determine and be an end.*"

Trustees are then to make partition and execute deeds. Distribution is to take place according to the mode described.

These, we believe, are in substance all the articles having any material bearing upon the questions now under consideration.

The object and purpose of the association were joint purchase of land, its management in a proper manner, facility in obtaining titles thereto, and after paying out of its sale the purchase money due by one to another (or rather the amount advanced beyond their respective proportions) and the expenses of the trust, then to partition, distribute and convey among, and to the beneficiaries what might respectively be due them.

The *object* of the *trust* was not the sale and disposal of the property, but of only so much thereof as was necessary for above purposes.

The *whole trustees only*, are invested with the power of sale; This power is separated from every other power in the articles, it is carefully guarded and kept entirely distinct, and the words "*or a majority of them*" taken away in every instance when a conveyance of the fee is contemplated.

The powers and trusts were to "cease, determine and be at an end," whenever a certain event took place, and the *power of sale* in the *whole trustees* is limited to a certain contingency. The great object of the association, was to have the largest amount of property and at the shortest practicable period, for partition and distribution among the owners; preservation and not alienation, was the moving purpose; this constituted the only legitimate fund for distribution, the only contemplated profits or fruits of the partnership.

The parties had no *resulting interest* except in the land remaining on hand for distribution, after said payments as above enumerated, and the securities on hand. This residual interest constituted their entire interest, and if there was none such, then they acquired nothing.

The great end and purpose were the proper management and preservation of the property; and to carry these out, a majority of the trustees, either by themselves or by attorney might act upon and over the property for these specific purposes.

If the *fifth* and *sixth* powers in the *third* article clothe the majority of the trustees with power to convey, and with power to authorize an attorney to convey away all or any portion of the premises, of what *use* or *purpose* was the *fourth* power in said article." Can any intelligent answer be given to this interrogatory? Why

this work of supererogation, why this repetition of words, why this inexcusable ignorance of language.

We must so construe instruments as well as laws, as to give full force and effect to each and every clause of the instrument 16 Howard's Rep. 617, 2 Cranch R. 341, 3 Story's R. 162. "The construction ought to be made on the entire deed, and not merely on any particular part of it; and therefore every part of a deed ought, if possible to take effect, and every word to operate." 16 John. R. 178. Greenl. cruise, title 32 ch. 20 sec. 6. Story on Cont. sec. 641 a. 3 Story's R. 423, *see* Bac. abr. statute H. 2. And if certainty once appears in a deed, and afterwards in the same deed it is spoken indefinitely, reference shall be to the certainty which appears. Greenl. cr. title 32 ch.20 sec. 7, We must then give effect to this 4th power. It must have its influence in construing and applying other portions of the instrument. One construction, the one we give to it, makes it operative and effectual—is consistent with every clause and power—derogates from none, and harmonizes with the common law principle that all must unite in executing a trust, and we think ought to prevail; the other construction, the one sought to be given to it, is not required by the language of the *fifth* and *sixth* powers nor by the general scope and spirit of the trust deed; and if carried out, would render inoperative and useless this *fourth* power. We would thus ride over it and trample it under foot, without occasion or necessity. We would strike it out of the articles without reason or authority.

But again, judgment and discretion devolved upon and were reposed in the whole trustees. No more property was to be alienated than necessary to satisfy the expenses of the trust. After this, the trusteeship ceased as regards the power of sale. The object was to retain as much property as possible for distribution. Now, to determine what property could be most advantageously sold, and what most advantageously reserved, was a vital element in the trust and required great good judgment, and discretion. Also to determine upon the terms of payment and the nature of the securities to be received in regard to what might be sold, was an important matter and involved and demanded like good judgment and discretion. These considerations entered into the very foundations of the trust and were only submitted to the *entire body* of trustees. Unless sound judgment was exercised *here*, the whole design of the association failed; that of profit in the distribution of the land among the owners thereof.

The said Aiken and Galland, two of the trustees were owners of over one third of the entire property. The other *three* trustees only owned twelve forty-eighths or one forth part of the whole. Can it be supposed for a moment that this one third interest was to have

no voice, no representation, no active influence, no substantial legal control in the disposition of the trust itself, but that the one fourth was to control this one third and all the residual interests represented by the trustees?

It does appear too plain for reasonable doubt, that if we construe this instrument, like all other instruments of similar character if we apply settled principles of interpretation, if we would not strike out a distinct, substantive clause containing an important power essential to the best interests of the beneficiaries, if we would carry out the design and spirit of the trust, we must limit the whole power of alienation to the entire trustees.

And judgment and discretion being required in the disposal of any and every portion of the property, and personal trust, and confidence having been reposed in the entire body of trustees it would, upon sound principles of equity and justice, appear that the whole trustees ought to unite in all conveyances; and such judgment trust and confidence being personal, and nesessary to the exercise of the trust, could not be delegated and they could not convey by attorney. We draw from this exposition, the following conclusions:

1st. The power of sale was a separate, independent and substantive power.

2d. It was limited by the words themselves to the entire board of trustees.

3d. It was further limited to such sales only as were necessary to pay the expenses of the trust: then it ceased.

4th. The object of the association was the purchase of land, its judicious management, payment *inter se* of the purchase money and expenses, their distribution by partition and not sale.

5th. The interest of the beneficiaries was in this *residuum* for partition and this constituted their profits.

6th. In every case of said articles, whenever alienation is contemplated, the whole trustees are mentioned and the words, "or a majority of them," most studiously left out.

7th. In this aspect, the articles embraced *two classes of powers*, one to be executed by a majority or by attorney, the other that of sale and conveyance of the subject matter of the trust by all the trustees personally, and therefore all must unite, and this power could not be delegated.

We then most earnestly insist, that all deeds executed by a bare majority of said trustees, or by an attorney appointed by such majority or even all of them, are simply void, convey no interest, affect no trust, or title to, or lien upon the property, but leave it precisely where it would have been had no sales ever been made.

And now let us examine the cases decided in our State as regards

these powers and ascertain what weight or consideration ought to be accorded to them. These cases are 1st. Telford vs. Barney. 1 G. Green R. 591–2 and 2 Barney vs. Chittenden (same case in error) 2 G. Greens R. 165! in regard to case of Telford vs. Barney a few words will suffice.

1st. It was a mere district Court decision, and therefore of no authority. 2d no *principle* is cited to sustain it. 3d. No *authority* is quoted supporting it. 4th. The positions of the Court do not reach the question involved.

The Court say. "These articles of association authorized the *trustees* to possess *themselves* of the *legal title*, which *they did* by the *judgment in partition*, if not before."

This we admit, and insist the *whole trustees* alone possessed the legal title.

Again the Court say. "With the legal title resides the power of alienation; and at law, alienation *sui juris*, which includes the power of appointing an agent."

For the purpose of this argument,, we admit this also, but was the legal title, the power of alienation, in the *majority* or in the *whole* trustees. We say in the whole. The legal estate in the whole was not as to a portion *sui juris*; but the equity belonged to others—it was a trust.

The questions before the Court were:

1st. Where reposed the legal title, in all, or in part, of trustees and 2, was personal confidence given, or could the trust be delegated.

Neither of these questions were ever fairly considered, but we dismiss this decision without further comment, and as unworthy of even this notice.

This case was appealed to the Supreme Court, and affirmed, see 2 G. Green R. 165–179.

We will examine, and see what consideration should be awarded to it.

The Court say, (p. 168) (169) That Marsh Lee and Delevan alone were before the Court awarding partition and that the two other trustees Aiken and Galland originally named in the articles of association with them, are not recognized in the proceeding in partition or the judgment, and that the shares of the N. Y. Co. were set off to and vested in Marsh, Lee and Delevan in trust &c.

And the Court further say (169) "The judgment in partition had the object of establishing title to these lands in those whose interests were there *passed upon and adjudicated.*" Again "we do not deem it necessary here to enquire how, or why only three of the trustees of the co. of five the named in the articles of association are made parties in the judgment of partition as trustees, to whom

by the decision of the Court, the interests of the persons composing that company are committed. The articles of association properly construed must solve the question here raised."

The Court would seem to determine that the legal title vested in the three trustees without examining into the why, and the wherefore; but admit that the articles properly construed must decide this question.

Now if the Court had looked into this matter with a clear judicial eye, it would have found those articles authorized a majorlty to institute, and appear in any form of proceeding necessary to establish the title, and that this act seeking partition was consistent with, and in pursuance of such power. They sought no divestiture of title, no displacement of trustees, no changes in the trust itself.

The Court then proceed to examine the articles and say, "that the *fourth* subdivision of third article where the power of sale is confined to the trustees, has reference to the said trustees or a majority of them as contained in the commencement of the article, and that this conclusion is sustained by reference to other portions of the articles, but to what portion, the Court in its wisdom does not condescend to inform us. But, continues the Court, "this point is *clearly set at rest* by the fifth subdivision of this article which gives to said trustees or a majority of them the power to make all contracts and to do all lawful things and acts necessary or proper to carry into effect the objects of this agreement, and this we consider is designed to give plenary power to the trustees or a majority of them to act for the Company."

The case of Sinclair *vs.* Jackson, 8 Cowen's R. 543, is then referred to, and an extract made therefrom, deemed exactly applicable to the point in controversy.

The same reasoning is applied in regard to the appointment of an attorney by a majority, and justified on the ground of its being to carry out the objects of the agreement as contained in subdivision six, of said third article.

We have but a few observations to make in regard to this case:—

1st, the Court expressly decline looking into the articles to ascertain why a majority of Trustees came into Court and sought an establishment of their title, Had they done so, they would have found that such majority were expressly authorized to do so.

2d, the Court nowhere pretends that any adversary proceedings were had, or in issue, for removal or change of Trusteeship.

3d, it adduces no reason or necessity for such change, nor any act of the Court rendering such a construction necessary.

4th, it does not assume, except inferentially, that any titles

were established, except between those whose rights were passed upon and adjudicated. Now, the respective rights of the Trustees, among themselves, were never adjudicated, they were not before the Court and could not have been decided; nor was any partition made or attempted to be made between them.

5th, it acquires the power of sale by a majority of Trustees, by reference to a clause independent of, and distinct from the principal power of sale.

6th, it acquires the power of appointing an attorney by a majority, to sell and convey, by reference in the same way, to a clause independent of and distinct from the principal power of sale.

7th, the construction placed on the articles, render entirely useless the power contained in the fourth sub-division—it obliterates it as out of place and meaningless,

8th, this construction does not construe the whole articles together, so as to make all and every part effectual.

9th, no appropriate authority is referred to; no legal principle cited; no sound reason given to sustain the decision.

10th, the Court state the design of the association to be, "gain and profit by the purchase and sale of lands." This, as we have shown, is simply untrue. The design was distribution—not sale; partition not alienation.

14th, the Court admits this to be a question purely of construction of private articles of association or partnership; and upon such construction this decision is based.

These were simple articles of co-partnership concerning the purchase and partition of lands; they were private articles, and the Court, in making its decision, considered no question concerning the constitution or laws of the State, nor did they announce or settle any rule of local law concerning real property; it was simply the construction of a private agreement concerning lands in the then Territory of Wisconsin, now State of Iowa. We say, then, it is not binding on this Court. In 16 Peter's R. 18, this Court say:—

"In all the various cases which have hitherto come before us for decision, this Court have uniformly supposed that the true interpretation of the 34th section limited its application to State laws, strictly local, that is to say, to the positive statutes of the State, and the construction thereof, adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate and other matters immoveable and intra-territorial, in thier nature and character. It never has been supposed by us that the section did apply, or was designed to apply to questions of a more general

nature, not at all dependent on local statutes or local usages of a fixed and permanent operation; as for example to the construction of ordinary contracts or other written instruments," etc. See, also, 8 Howard R. 543; 3 Howard R. 464; 13 Howard R. 268; 4 Howard R. 379; 3 Sumner's R. 136, 277; 12 Howard R. 147 8.

These authorities all go to establish the same principle, and we think are entirely applicable, and amply sufficient for our purpose.

We have thus presented our case, embracing as we believe, evey important question in controversy. It is submitted to this Court in entire confidence that law and justice are with us in what we ask. Here is a case where three Trustees seek to overthrow the whole characterr of the trust confided to them; it is one of hardship and of wrong. We ask only simple, legal justice, administered in harmony with the spirit and principles which have heretofore characterized the decisions of this Court; and we think, most sincerely, the Court below erred in excluding the evidence offered by us, and that this, the highest judicial tribunal in our country, will so find.

GEO. C. DIXON,
of Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States.

CHARLES CLAGGETT
vs.
D. W. KILBOURNE.

On Error from the District Court of Iowa.

ARGUMENT FOR THE DEFENDANT.

In 1841, a judgment of partition was rendered in the Territorial District Court of Lee county, Iowa, by which 119,000 acres of land were distributed among a large number of claimants. To Marsh, Lee, and Delavan, as trustees, under certain articles of association, a little more than two-fifths of this entire tract was awarded. They proceeded to dispose of these lands in the due execution of their trust, and the defendant became one of the purchasers.

In 1851, the one-sixth part of all these lands so awarded to Marsh, Lee, and Delavan, was levied upon by virtue of an execution, under a judgment rendered October 5th, 1843. (*See Record, p.* 158.) The plaintiff claims, under the sale then made, and the validity of his title is now to be determined.

The "articles of association" above referred to, appointed five trustees. (*Record, p.* 38.) Only three of these are named in the judgment of partition. In their hands the lands awarded to the association were placed, as the sole trustees, to carry into effect the trust created by these articles. The sale was made by these three trustees. (*Record, p.* 162.) As the validity of any sale that could be made by these three trustees is denied, I shall first proceed to the discussion of that question.

We contend that such sales would be valid, independent of the power derived from the judgment of partition; inasmuch as by the "articles of association," a majority of the trustees had the power to sell and convey. We shall see by reference to the third article in this instrument, (*Record, p.* 39–40,)" that the said trustees, or a majority of them, shall have power, and it shall be their duty," to do certain things therein enumerated, and which are embraced under six separate heads or subdivisions. The fourth of these subdivisions empowers them to sell and convey any part of these lands. It is true this subdivision commences, "And the said trustees," without repeating the words, "or a majority of them; but we contend that these latter words are fairly to be implied, from the tenor of the whole instrument. The words, "and the said trustees," means the trustees acting through a majority, and in accordance with the general authority given at the beginning of this third article.

If it had been intended to have made the selling and conveyance of the land a special exception to the general power of the majority, would it not have been so declared in more explicit terms? Especially, when in the very next subdivision power is given to the majority "to make all con-'tracts, and do all lawful things and acts that may be necessa-'ry and proper to carry into effect the objects of this agreement." Here express authority is given to the majority to make *all contracts*, and do all lawful things and acts. Would one particular description of *contracts*, and one particular class of *acts*, be excluded by a mere omission of words in the previous paragraph? Would two radically different rules on the same subject be embraced in these two contiguous subdivisions without a more explicit declaration of the intent of the parties? Was it not rather the evident intention that they should both be in harmony, and that in each case a majority should have power to act?

But why then (it is asked) insert the fourth subdivision at all, if it was in substance included in the fifth? It is easier

to understand why there should be a *repetition* of this power, than why there should be an *antagonism* between these two provisions. Besides, the 4th subdivision gave the power to sell on credit, which might otherwise be questionable. This may have been the prime object of its insertion.

Again, the sixth subdivision of this article gives the majority of the trustees power to employ attorneys, clerks, and agents; to substitute these for themselves, and to give them authority to do what was necessary to carry out the objects of the agreement. Under this authority the majority might appoint an attorney, in fact, to make sales of the land. Could they do by an attorney what they had not power to do themselves?

The Supreme Court of the State of Iowa has decided this question, in accordance with the views just expressed. (*Barney vs. Chittenden*, 2 *Greene* R., *p.* 170–1.) Now, although in the construction of an instrument of this nature, this Court would not, as a general rule, feel itself obliged to follow the decisions of the State courts, still it is respectfully submitted whether the present case does not form an exception. The rule seems to be this, that where a decision of a State court has to any considerable extent fixed the rights and titles to real estate, and become a rule of property within the State, such local decision will be specially respected here.

Now, the record in this case shows that Marsh, Lee and Delavan held, as trustees, near 50,000 acres of land, including more than two-fifths of the city of Keokuk, and some other towns. From our geographical knowledge, and from the general history of the country, we also know that the whole of this tract is well populated, and that Keokuk is the third city in the State of Iowa, containing more than 8,000 people. Of all this the Court will judicially take notice. It will also be presumed that after the lapse of more than twenty years, these trustees have fully executed their trusts, and that all these lands and town lots have passed through

their hands into those of other owners, now numbering many hundreds, if not thousands.

Now, the Supreme Court of Iowa has decided, that under the provisions of those "articles of association," a sale made by these three trustees was valid, without reference to any thing but the articles themselves. Hundreds of persons have purchased property on the faith of that decision. If the title of these purchasers should finally be held to be dependent upon this question, is not the present case one in which this Court will follow the State decision as a rule of action, in accordance with the principle so often laid down by your Honors? Rarely has a case been presented, where so many titles would be found dependent on a single rule, and where harmony between State and Federal decisions was more important.

But, whatever may be thought of the power of the trustees to sell, under the "articles of association," there can, we think, be no doubt of their having that power under the judgment of partition. That judgment distinctly places all these lands in the legal control of Marsh, Lee and Delavan, with full power to sell and dispose of them in accordance with the terms of those "articles of association."

But it is said that the proceedings of the court in the partition suit were irregular. They certainly cannot be corrected in a collateral proceeding now. This is the universal current of authorities.

In Cole vs. Hall, (2 *Hill N. Y. Reports*, 627,) the plaintiff in ejectment offered the record of partition as the source of his title. Great irregularities had shown themselves in the proceedings in that partition case; but Judge Cowan says, in reply to that objection, "It would be enough to answer, that here was jurisdiction and a judgment, and that such matters of mere irregularity cannot be enquired into collaterally."

It is urged, however, that the District Court of the Territory of Iowa, which rendered this judgment, was a court of inferior and limited jurisdiction. There never was a court

organized with a more extensive and general jurisdiction than this.

The act of Congress, organizing the Territory of Iowa, declared that "the judicial power of the said Territory shall be vested in a supreme court, district court, probate courts, and in justices of the peace." The District Court was the highest court of original jurisdiction. That jurisdiction extended to all cases in law or equity, whatever the amount involved, and to all civil and criminal cases. It was also a Federal as well as a Territorial court. It had power to hear and determine all judicial matters, of every description, arising within the Territory.

But it is said that the partition law being a special statute, the court, in the adjudication of cases arising under it, was acting *quoad hoc* as a court of special and limited jurisdiction. This is also a mistake. The partition act was not a special, but a general law. It regulated proceedings in partition, just as other statutes regulated those in replevin, or trespass, or in chancery. The one was no more a special statute than the other. (*Acts of* 1838–9, *p.* 355.)

But it is urged that the court had no power to remove two of these trustees, and to give to the other three the powers which the "articles of association" devolved upon the whole five; and that, even if it had such power, the proper proceedings had not been instituted to call it into exercise.

As to the question of power, it is sufficient to say that the District Court was a court of equity, and that all courts of equity have powers of this description. When, in consequence of fraud, gross negligence, or willful departure from their duty, loss has happened, or is likely to happen, to the trust, courts of equity will remove trustees and substitute new ones. (2 *Fonbl, Eq., b.* 2, *c.* 7, § 1, *note a.*) Indeed, they will thus exercise their power when the trustees have become enemies to each other, and cannot act together, if the estate is thereby likely to sustain a loss. (*Uverdale vs. Ettrick,* 2 *Chan. Cas.,* 130.) Upon the same principle, after one or more

of the trustees is removed, the whole duty may be devolved upon the remainder, if the number left is deemed sufficient.

Now, the District Court not only had general chancery powers conferred upon it by act of Congress organizing the Territory, but special authority was given it for that same purpose, by this very partition act itself. Section 56 declares, that "the proceedings authorized by this act being intended as a substitute for all partitions in chancery, as well as at law, the court is authorized to exercise equity powers, except as herein otherwise provided." (*Acts of* 1858–9, *p.* 359.)

When the court was about to award these lands to the trustees, if it had been sufficiently shown that a portion of their number had declined to act, or were not proper persons to perform that duty, they might have been omitted, and the trust limited to the remainder of their number.

As to the objection that no proper proceedings were instituted for that purpose, we reply, how is that fact made to appear? All presumptions are in favor of the regularity of proceeding in courts of general jurisdiction.

But even if there were no proper proceedings instituted, it would only be an irregularity, or error. The court was not acting outside of its jurisdictional limits. It rendered a judgment. If not rectified in a proper appellate court, that judgment will be valid, however irregular. More than twenty years have now elapsed, and that judgment has never been corrected on appeal. It cannot now be impeached collaterally.

This is a doctrine universally recognized, and nowhere has it been more positively or steadily maintained than by this Court. Among a great number of cases, I will only cite the following: *Kempe's lessee vs. Kennedy,* 5 *Cranch,* 173, 187; *Williams vs. Ameroyd,* 7 *Cranch,* 424, 434; *ex parte Tobias Watkins,* 3 *Peters,* 193; *Voorhees vs. U. S. Bank,* 10 *Peters,* 449; *Grignon vs. Astor,* 2 *Howard,* 319.

In this latter case, the Court, in allusion to the case of *Voorhees vs. U. S. Bank,* says: "We do not deem it neces-

'sary now, or hereafter, to retrace the reasons, or the author-'ties on which the decisions of this court in that, or the ca-'ses which precede it, rested. They are founded on the oldest 'and most sacred principles of the common law. Time has 'consecrated them. The courts of the States have followed, 'and this court has never departed from them. They are 'rules of propriety on which the repose of the country de-'pends. Titles acquired under the proceedings of courts of 'competent jurisdiction, must be deemed inviolable in collat-'eral actions, or none can know what is his own." 2 *How-ard*, 343.

Nor does it matter whether any particular question was actually raised and decided, or not. The judgment or decree of a court, possessing competent jurisdiction, is final, not only upon matters actually decided, but also upon matters which the parties to the cause might have had decided. (*Bruen vs. Hone*, 2 *Barb., N. Y. R.*, 596.)

The District Court, in rendering the judgment of partition, gave authority to Marsh, Lee, and Delavan, to act as sole trustees in regard to these lands. In other words, the legal title to these lands was adjudged to belong to them. That court had power to act upon all the questions necessary to enable it to render such a judgment. In *Grignon vs. Astor*, this Court says: "The granting the license to sell is an ad-'judication upon all the facts necessary to enable it to give 'jurisdiction, and whether they existed or not is wholly im-'material, if no appeal is taken." * * "This court, hav-'ing power to make the decree, it can be impeached only by 'fraud in the party who obtains it. A purchaser under it is 'not bound to look beyond the decree. If there be error in 'it of the most palpable kind; if the court who rendered it 'have, in the exercise of jurisdiction, disregarded, miscon-'strued, or disobeyed the plain provisions of the law which 'gave them the power to hear and determine the case before 'them, the title of a purchaser is as much protected as if the 'adjudication would stand the test of a writ of error. So

'where an appeal is given, but not taken in the time pre-'scribed by law." (2 *Howard*, 340–1.)

The principles here repeated apply fully to the case at bar. It was within the jurisdiction of the Iowa court in 1841, to do all that was then done. That court, being a court of general jurisdiction, was not bound to set forth upon its records all the facts upon which its decisions were founded. Everything will be presumed to have been correctly done, and that a proper case was made out to justify the change that was made in regard to the trustees. But even if the proceedings in regard to that change were ever so irregular, the validity of what was then done, could not now be collaterally questioned.

But the Supreme Court of Iowa has decided this identical question, and in regard to these very trustees. (*Wright vs. Marsh, Lee, and Delavan*, 2 *Greene*, 118.) This decision was deliberately made upon a full review of all the authorities, and was founded chiefly on the decisions of the Supreme Court of the State of New York, upon a statute which was the basis of our own.

Here then we have a strictly local law—a State statute—construed by the Supreme Court of that State. The case is clearly brought within the rule laid down in 16 *Peters*, 18, and in many other cases. The construction put upon the State law by the State court will be the rule of decision for this Court in that respect, and thus the question we have been discussing is conclusively settled.

It will be remembered that this judgment of partition, by which Marsh, Lee, and Delavan were made the sole trustees, was rendered in 1841. In 1849 the Supreme Court of Iowa made the decision that Marsh, Lee, and Delavan could make a valid conveyance, and that the judgment of partition was evidence of title. That decision, therefore, became a rule of property in our State. The plaintiff in this suit afterwards, in 1851, purchased the land in controversy, and then lay by till 1856, before commencing proceedings to secure any

rights he might have obtained by that purchase. If, under such circumstances, he can now successfully question the power of Marsh, Lee, and Delavan to make a valid conveyance, who can feel safe in regard to any title to real estate?

But, finally, let us inquire what evidence we have that Galland—through whom the plaintiff derives title—ever had any interest whatever in the land? The "articles of association" will be referred to as proof of this fact. But how do we know that there ever were any such articles? They were not given in evidence in the court below. Even what purports to be a copy, set forth in the record of the partition suit, does not show a single signature of any of the parties.

I am fully aware that he who claims under a deed is bound by all the recitals contained in that deed. He cannot claim a portion of the instrument to be true and valid, and repudiate the remainder; and I am free to admit that the same principle is applicable to the present case. If we had brought a suit claiming, under this judgment, as grantees of Marsh, Lee, and Delavan, we should have been estopped from denying the truth of the "articles of association" as therein set forth.

But how would it be with a plaintiff who relies, for his title, entirely upon the recitals in a deed, or a judgment, and at the same time denies the validity of the deed, or judgment, itself? Could he, while denying such validity, safely rest his case entirely on the recital in the instrument which he repudiates? The rule above stated, as to estoppel, is reciprocal. If he who claims under an instrument cannot question the truth of a recital contained therein, certainly he who claims under a recital cannot question the validity of the instrument itself.

Now, we fully admit the validity of the judgment, and the plaintiff must do the same, or he has no foundation to stand upon. By that judgment the legal interest in this land was vested in Marsh, Lee, and Delavan, and they had a full right to sell and convey the same in accordance with the

"articles of association." The substantial interests of the beneficiaries under that instrument remain unaffected by this change. Galland, as a *cestui que trust*, still retained all that he ever had in the property of this association. Was his interest such that it could have been levied upon and sold under an execution at law?

This certainly could not be done at common law. In *Van-Ness vs. Hyatt*, 13 *Peters*, 298, this Court says: "The prin-'ciple of the common law undoubtedly is that no property, 'but that in which the debtor has a legal title, is liable to be 'taken by this execution." And a little further down, in speaking of the sale of trust property, they quote a decision of Lord Ellenborough, in 8 *East.*, 481, to the effect that the sheriff being only able to sell subject to the trusts, and as the vender would be obliged to go into equity to ascertain his exact interests, it is better that the judgment creditor should do this in the first instance, so that the purchaser might know exactly what he was purchasing, and in order that the property might not be sacrificed, and a large equitable interest be exhausted in satisfaction of a small demand to the detriment of other creditors.

Even an equity of redemption is not subject to sale on execution at common law, (13 *Peters* 294, *and* 4 *Kent's Com.* 160.) In this country, however, the law in this respect is becoming changed. A mortgage is in effect regarded here as only a security, and not really as conveying the real estate, which practically, and in some States, absolutely, remains in the mortgagor until foreclosure. In many of the States, therefore, the equity of redemption is liable to sale on execution.

Such, however, is not the case with other equitable interests in general, unless made so by express statute. Had that been done in Iown, and if so, when?

The code of Iowa of 1851, repealed all laws on this subject. (*See code, p.* 8, § 28.) This took effect July 1st, 1851. (*Ib., p.* 472.) The levy was made July 24, 1851. (*Record, p.* 158.) Now, this code makes no provision for the sale of equitable

interests. The common law is therefore the rule on this subject, and the levy and sale were made without authority of law.

It is true, that the 31st section of the code declares that the repeal of former acts shall not affect any suit previously commenced; but it expressly directs that all future proceedings in such cases "shall be conformed to the provisions of this code as far as consistent."

The evident meaning of this section is, that proceedings which shall have taken place when the new law took effect, should not be invalidated thereby, but that subsequent proceedings should, as far as practicable, be made to conform to the code. The execution was issued June 30th, 1851. It was perfectly valid after the 1st of July, but it then became an instrument of the new law, and must be exercised in accordance with the provisions of that law. The levy and sale were therefore invalid.

In case it should be held that the law in force when the execution was issued would control its operation, it would be necessary to see whether the previous statute would authorize the sale of an equitable interest of this kind on an execution. The act previously in force was, as far as we can ascertain, that passed in 1839. This statute subjected to execution all personal and real estate, including "goods and chattels, lands, 'tenements and hereditaments, and any title or equitable 'right to lands, whether under a certificate from any land 'office, or a title bond from any person for a warrantee deed, 'or any right whatever to the possession of lands." (*Acts of* 1838-'9, *p.* 197.)

Does this statute render *all equitable interests* subject to sale on execution, or only *the two classes enumerated therein*, that is to say, *interests held under a certificate from a land office*, or *a title bond for a warrantee deed?* We think the latter.

At all events, an equitable interest, to be included in this provision, must be *actual*, and not a mere possibility. It must be *present and real*, not *future and contingent*. We shall speak

of the nature of Galland's interest in this respect presently.

But if that interest could be sold on execution under our statute, what interest could the purchaser acquire thereby? Clearly none other than that which Galland himself possessed. It is very evident that the sheriff could only levy on and sell what Galland had, and the purchaser could acquire that and nothing more. If an equitable interest were sold, the purchaser would not obtain a legal interest. If Galland could not have brought this action against Kilbourne, in case his original interest still remained in him, could his assignee, through a sheriff's sale, do so? It is self-evident that the purchaser gets nothing more than Galland had. He is substituted in place of the judgment debtor, and has the same rights and interests.

Now, what were Galland's rights as a beneficiary, under these "articles of association"? He merely had a contingent interest in the possible residue, after the trustees had paid all expenses, costs, and charges. He could not have selected any tract, nor the one-sixth part of any such tract, and say, this is mine. He could not have maintained an action of ejectment, (called an action of right in one statute,) even if the land sued for had not been previously sold by the trustees. Peradventure, all the lands must be sold to pay cost and charges. He could not have maintained such an action at law while his rights were conditional and uncertain. He would be obliged to resort to his bill in chancery, to ascertain what was left (if anything) after the winding up of the whole transaction. (8 *East.*, 481, *cited in Van Ness vs. Hyatt*, 13 *Peters*, 298.) The purchaser has the same rights, and must enforce them in the same way.

But an attempt is made to show, that as Galland, under the articles of association, held a legal interest as trustee, and a somewhat smaller equitable interest as *cestui que trust*, his equitable estate merged in his legal and his title to that extent became complete.

Now, we hold that there never could have been any mer-

ger of Galland's interests, and for several sufficient reasons. In the first place, Galland's legal and equitable interests were not held by the same tenure. The former was held in joint tenancy, (*Record, p.* 39,) while any interest he might hold in the land, would be held as a tenant in common. In the United States, all estates vested in two or more persons are to be deemed tenancies in common, unless a different tenure is clearly expressed or implied in the instrument creating the estate. (2 *Cruise*, 364, *note.*) If the two interests were merged in one, by what tenure would it be held?

Again, in order that one interest should merge in another, they must both be *estates.* A mere right does not merge, and, *vice versa,* an estate would not merge in a mere right. An estate for life does not merge in a reversion, as the latter is a mere *right,* and not an *estate.* (*Greenleaf's Cruise, Tit.* 39, § 14, *vol.* 6, *p.* 470.)

The estate must be *vested,* because a vested estate cannot merge in one that is contingent; for until the contingency happens, it has no existence. (3 *Prest. Conv.*, 161, *ed.* 3.)

Now, Galland's interest, as a *cestui que trust,* was a mere *right,* and not an *estate.* It was a contingency, and the estate had no existence until the conditions on which it was to arise had been performed.

In the third place, merger will not take place to the detriment of third parties, where two estates *are limited by the same instrument to take effect, at the same time.* (*Greenleaf's Cruise, Tit.* 39, § 66.) These estates (if so they could be called) were created by the same instrument, to take effect at the same time, and if a merger were to take place, it would be much to the detriment of third parties.

"In regard to estates acquired by the act of the party, the 'rule, as generally understood in the United States, seems to 'be this: that they merge or not, and mortgages are extin- 'tinguished or not, according to the intent of the party, as 'collected either from the deeds or from the circumstances of 'the transaction." (1 *Greenleaf's Cruise, title* 8, *sec.* 37, *note,*

citing Gibson vs. Crehore, 3 *Pick.*, 475, and many other cases.) There certainly is no reason to believe that the parties to these "articles of association" ever intended that the equitable interest of the trustees was at once to merge in their legal estates, but the very reverse was undoubtedly intended.

But the great reason of all, why there could be no merger, especially in favor of the plaintiff in error, is, that long before the rendition of Hull's judgment, under which he derived title, Galland's legal estate had wholly ceased, and Marsh, Lee, and Delavan were the sole trustees. The judgment of partition had been rendered. Galland had no longer two interests in this property, and a merger was therefore impossible.

If, therefore, the equitable interest of Galland could have been levied upon and sold under this execution, the purchaser acquired no legal interest in any portion of the land itself, but only an equitable right to take one-sixth part of what remained, (if anything,) after the costs and charges had been paid off. A bill in chancery would have been necessary to enable him to ascertain his rights, and to have his portion set off to him, before he could bring his action at law for any part of the land itself.

It may be urged, however, that this sale of the land itself, instead of the equitable interest of Galland, was only an irregularity which should have been corrected by a motion to the proper court at the time. It certainly is no mere irregularity to seize and sell what the defendant does not own, and Galland never owned this specific land. Irregularities relate to form; this, certainly, is substance.

But if this be regarded as a mere irregularity, then surely nothing passed by the sale which might not have been regularly levied upon and sold at the time. The levy and sale of the land itself will, at the most, be regarded only as a sale of what Galland held under these "articles of association." The purchaser will certainly have acquired nothing more than Galland's equitable interest. An error will not be cor-

rected by giving the party in fault more than he would have obtained if there had been no error.

But even suppose we are wrong in our position, and that this Court should now hold that a legal estate in the lands themselves was acquired by the purchaser, the title of the defendant in error would not be thereby affected. He had previously purchased the property in controversy from Marsh, Lee, and Delavan, (*Record, p.* 162,) who, as has been fully shown already, had power to sell. In the absence of all proof of fraud or illegality in these sales by the trustees, no such thing will be presumed. We can, therefore, assume that the trustees, in the legitimate discharge of their duties, sold these lands for the purpose of raising the means of discharging the claims against them, pursuant to the "articles of association." Whatever, therefore, may be thought of the right of levying upon and selling an equitable interest, and thereby converting it into a legal estate, so as to enable the plaintiff to maintain such a suit as this, it certainly would not disturb a sale regularly and legally made by the trustees, prior to the levy under the judgment of Hull.

But we shall be told that this judgment was a lien upon Galland's interest, and redered a subsequent sale invalid. Suppose, for argument's sake, we admit this to be the fact. Two years had elapsed after the judgment of partition, and before the rendition of Hull's judgment. The sale to Kilbourne would certainly have been valid if made within those two years.

Now it is admitted that Kilbourne holds, under a sale from Marsh, Lee and Delavan, without stating when that sale took place. (*Record, p.* 162.) As the plaintiff must make out his case, if *any* sale from these trustees to Kilbourne, of any date whatever, would render his (the plaintiff's) title invalid, his case is not made out. All presumptions are against him. This sale, under present circumstances, will be presumed to have been made prior to the rendition of Hull's judgment, and would surely have been valid and free from the lien of that judgment.

Again, supposing Hull's judgment lien to have attached to this interest in October, 1843, did it not cease to operate in January, 1846? The act of this latter date declared that "no judgment in the District Court, in any county in this Territory, shall be a lien upon the equitable estate of the defendant in real estate, provided such equitable interest does not appear of record in the county wherein such real estate is situated. (*Acts of* 1845–'6, *p.* 33.)

Do not the provisions of that act apply directly to Hull's judgment? If it had previously become a lien, did not this law, as soon as it took effect, divest that lien, unless Galland's equitable interest were previously recorded? It is not pretended that this was done.

We are aware that, as a general rule, laws will not be retrospective in their operation, unless the legislature have clearly manifested such an intention. If this law, for instance, had peremptorily declared that no lien should attach to any equitable interest, although it had previously been subject to such liens, it might require more positive language than that found in the above act of 1846, to devest a pre-existing lien.

But the case is different here. No disability is created by this act of 1846, which is not readily cured by the party himself. No right is taken away, but simply a duty is imposed on Hull, to have a certain record made for the protection of future *bona fide* purchasers. At any time before that law took effect, Hull had only need to have caused Galland's equitable interest to have been recorded, and his lien would have been unaffected by this law. If he failed to do this, can he complain of injury resulting from his own negligence?

The purpose of the legislature was to protect innocent purchasers against the danger of concealed liens. This danger was just as great when arising from previous as from subsequent liens. No stronger reason for the passage of such a law need be given than that furnished by the case now under

consideration. According to our present hypothesis, a lien was created in October, 1843. It lay nearly eight years unexercised. During all that time Marsh, Lee, and Delavan were selling lands, which they had full legal power to do. Meanwhile, this lien was treacherously lying in ambush, waiting till some *bona fide* purchaser should pay full price for a part or all of this land, when it would suddenly pounce upon its astonished victim.

It was to prevent such wrongs as this that the act of 1846 was passed, and as well might it be said that a registry act, or a statute of limitations, conceived in general terms, would not apply to pre-existing cases, as that this act would not do so. There was just as strong a reason to protect the people against the effect of old secret liens, as against new ones. The language of this law is sufficiently comprehensive to include both. It works no hardship, as it devests no lien except with the consent or acquiescence of him who holds it. It only requires every one to be honest, and not to practice deception or collude with others for that purpose—as well him who had previously obtained a judgment, as him who should afterwards obtain one.

If it had been shown that Galland's equitable interest in the land had been recorded in Lee county prior to the taking effect of this act of January, 1846, any lien which previously existed would not have been interrupted by the law. Nothing of this kind having been shown, the lien will be presumed to have ceased to operate from and after January, 1846, and was not in force at the date of the levy and sale.

Nearly ten years elapsed between the date of the judgment of partition and that of the levy under Hull's judgment. During all that time, Marsh, Lee, and Delavan had full power to sell in their capacity of trustees. They did sell to the defendant in error. For two years at the commencement, and for five and a half years at the end of those ten years, there was no lien to prevent Kilbourne from purchas-

ing with safety; and only two years and three months, (from October, 1843, to January, 1846,) at the most, that this lien was in existence. The presumption will certainly be that the conveyance to Kilbourne was free from the effect of this lien.

But we now deny that any such lien ever existed at all. The statute in force at the time this judgment was rendered, declared that "judgments in the Supreme and District Courts of this Territory shall have the operation of, and shall be liens on, the real estate of the person, or persons, against whom such judgments may be rendered."—(*Acts of* 1839, ~~p.~~, *p.* 76.) Our statute also construes the words "real estate" to include "lands, tenements, and hereditaments, and all rights thereto and interests therein."—(*Revised Laws of* 1843, *p.* 573.)

Now, we contend that these rights and interests in lands which are included in the term "real estate," must mean rights and interests in some specific portion of lands, and that it cannot include a mere contingency in what may or may not be a residue growing out of a transaction like that contemplated by the "articles of association" we have been considering.

We shall not now dispute that the term "real estate" in our statute may include equitable as well as legal interests in lands; but it certainly does not include all descriptions of equitable interests, and so the Supreme Court of the State has always held.

In Harrington vs. Sharp, (1 *Greene*, 131,) the Court decided that a pre-emption right to a tract of land was not "real estate" to which a lien would attach under our statute. And in Blain vs. Stewart, (2 *Clarke*, 378,) it was held that an unrecorded deed which was subsequently canceled, (though not until after a judgment had been obtained against the grantee therein,) did not create such an interest as to cause the lien of the judgment to attach so as to prejudice a subsequent *bona fide* purchaser.

These cases certainly show that there are *interests in lands* to which liens do not attach, under ~~the~~ statute. It will be observed, too, that in these cases the interests were limited to specific tracts of land, instead of being like those of Galland, a mere rambling right—a vagrant possibility—entirely contingent upon the success of a speculation, entered into at about the flood-tide of one of our paper-money inflations. If the company ever received sufficient to reimburse themselves for all the moneys advanced, together with costs, charges, and interest, it would be marvelous. And yet, until all this was done, and a part of the land was left unexpended, Galland would have no interest whatever in an acre of it. Is this such an interest as would cause a judgment lien to attach to the whole body of the lands set apart to these trustees? The idea seems preposterous.

Now if no lien attached to this entire property, the sale to Kilbourne was clearly valid—having been made by Marsh, Lee, and Delavan before the levy under Hull's execution. But if the lien did attach to all this land, still from January, 1846, to July 24, 1851, (the day of the levy,) the lien had been released by operation of law.

At all events, for the two years which intervened between the date of the judgment of partition and that of Hull's judgment, there was no lien; and as the plaintiff must show a complete title in himself, he should have made it to appear that Kilbourne did not purchase during the time when the lien did not exist—it having been admitted that such purchase was made at some time to which no date was given.

But if this is not the correct doctrine; and if this Court shall hold that there was a secret lien of which Kilbourne was bound to take notice at his peril, still we say that this lien was upon Galland's interest, and the subsequent levy and sale was only of that interest; and the purchaser only acquired under that sale just what Galland had. This being but an equity, the purchaser did *not* acquire a legal estate enabling

him to institute an action at law for the possession. The interest of the purchaser was only a mere contingency. His only remedy was through a bill in chancery to ascertain whether any real interest remained in Galland, and what was its amount.

And as to Marsh, Lee, and Delavan having no power to sell, we say, 1st: The plaintiff-in-error is estopped from denying such power which is given by the judgment of partition, as he has shown no right whatever to this land except through a recital contained in that judgment. 2nd. If this were not the case, we have shown a right in the majority of the trustees, derived from the "articles of association" themselves, enabling them to convey. But, 3d, and above all, we claim this right from the judgment of partition itself, by which it was given to these trustees solely; and that judgment, whether right or wrong, cannot be questioned in this collateral proceeding.

Hull's judgment, and the sale under it, therefore, gave the purchaser no right to the land in controversy, and the District Court was entirely correct in deciding that it should not be received.

CHAS. MASON,

For defendant in error.

Mr Justice Swayne

SUPREME COURT OF THE UNITED STATES.

No. ~~211~~ 160.

JAMES P. HARKNESS AND MARIA HARKNESS, APP'TS,

vs.

ISAAC UNDERHILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GEO. S. GIDEON, printer, 511 Ninth street, Washington, D. C.

SUPREME COURT OF THE UNITED STATES.

No. 244.

JAMES P. HARKNESS AND MARIA HARKNESS, APP'TS,

vs.

ISAAC UNDERHILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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And thereupon your orator, the said James P. Harkness, and oratrix, the said Maria Harkness, show that on and before the fifth day of April, 1832, one Isaac Waters was one actual settler, being a housekeeper upon that portion of the lands belonging to the United States, known as the east half of the south-east quarter of section four, in township eight, north of range eight, east of the fourth principal meridian, lying and being in the county of Peoria and State of Illinois, that the said Waters, from the said 5th day of April, 1832, and until the 13th day of July, 1833, was in possession of the whole of the said half quarter section, and until the 2d day of July, 1835, was in possession of the west half of the same, and that while he was in possession of the same, he improved and cultivated the same, his said improvement and cultivation beginning in the said month of April, 1832.

Occupation & settlement by Waters.

That the said Waters, on the 24th day of November, in the said year 1832, in order to avail himself of the provisions of the act of Congress entitled, "An act supplementary to the several laws for the sale of public lands," approved 5th April, 1832, and in conformity with the instructions contained in the circular of the Commissioner of the General Land Office, dated the 8th day of May, 1832, made his affidavit before the proper officer, stating and deposing therein that he was an actual settler and housekeeper on the tract of land aforesaid, and that he thereby applied to enter the same, which would include his said improvement on said land, which said affidavit was corroborated by the affidavit of one John G. Trail, also made on the day and year aforesaid, wherein and whereby the said Trail (who was a disinterested person) testified that the said Waters was an actual settler and housekeeper on said land, authenticated copies of which said affidavits marked (A,) are herewith filed as an exhibit herein.

1 Land Laws, 494.

2 Land Laws, 561.

Waters' Aff'ts. Voucher (A.)

That afterwards, to wit: on the 27th day of September, 1832, the said Waters presented to and filed with the Register of the Land Office at Quincy, the said parcel of land, being in the District of lands subject to sale at said office, the said affidavits of him, the said Waters, and of the said Trail, and then applied for the purchase and entry of said land, but could not make the same, for reason that the public survey of the township in which said tract of land was situate, had not then been made and returned to the said office.

Filed affidavits.

That afterwards, to wit: on the day of 1835, the plat and survey of the said township of land was filed in the Land Office at Quincy, and that then the said tract of land became subject to sale and entry.

Filing of Public Survey.

That the said Waters, after presenting and filing his said affidavits and proofs aforesaid, of his right to a pre-emption to the said tract of land, departed this life intestate, on or about the 1st day of August, 1835, leaving Abigail, his widow, Clark Waters, your oratrix, Maria, (then intermarried with your orator,) Sophronia, (then intermarried with one Nicholson,) all then of full age, and Charles Waters, Eben Waters, Henry Waters and Isaac Waters, then minors under the age of twenty-one years, his children and heirs at law, him surviving.

Death of Waters.

That the said Abigail, widow as aforesaid, in behalf of herself and the said heirs at law, of the said Waters, afterwards on the 7th day of August, 1835, and within one year after the said public survey of said township, was filed in the said office as aforesaid, applied under the provisions of the act, approved the 2d of March, 1833, entitled, "An act to revise the act entitled, 'an act supplementary to the several laws, for the sale of public lands,'" approved 5th April, 1832, upon the affidavits and proofs before them, filed by the said Waters, in the said office as aforesaid, to the Register and Receiver of said office, for the allowance of a pre-emption right to the said half-quarter section of land under the provision of the said several acts of Congress above referred to, and said affidavits and proofs "substantiating to the entire satisfaction of the said Register and Beceiver." That the said Abigail, widow, and the said heirs at law of the said Waters, as his legal speculatives, are entitled to the benefit of the provision of the said several acts of Congress. The said claim to a pre-emption for said tract of land was by the said Register and Receiver adjudged and allowed to the said widow and the said heirs at law, and thereupon the said land was entered by the said Abigail in behalf of herself and the said heirs at law of the said Waters, and the Receiver issued and delivered to the said Abigail a duplicate receipt for the purchase money then paid for the same, a copy of which, said receipt marked (B) is herewith filed as an exhibit herein.

1 Land Laws, 521.

Entry of Land by Waters.

Exhibit B.

That the said receipt was recorded on the 10th day of September, 1836, in the office of the Recorder of the said county of Peoria, a copy of which,

Exhibit C.

Copy of record of receipt.

said record of said duplicate receipt marked (C) is herein filed as an exhibit herein.

And your orator and oratrix further show that the said Waters, after filing his said affidavits and proofs aforesaid, to wit: on the 13th day of July, 1833, made, executed and delivered his certain writing obligatory, bearing date the day and year aforesaid, to Stephen Stillman and William A. Stewart, reciting therein that the said Waters and Stillman did, jointly and by mutual consent, improve and cultivate said half-quarter section of land; that the said land came under the [then] last act of Congress granting pre-emption rights, and that at the time of proving the right to said land, the said Stillman being confined to a bed of sickness, it was mutually agreed that the proof should be made in the name of the said Waters, which was done with the understanding that as soon as a title should be obtained by the said Waters, he should make the said Stillman a clear deed to the east half of said half-quarter section, (the said Stewart having bought an undivided half of Stillman's half of said land) he, the said Stewart, to pay one-half of the whole purchase money (fifty dollars) at any time when required to be paid into the Land Office, and by which said writing obligatory the said Waters bound himself to make to said Stillman and Stewart a deed to said land, being forty acres, as above described, under which said bond, and by the authority thereof, the said Stillman and Stewart entered upon and into the possession of the east half of the said parcel of land, with the consent of the said Waters, and they caused said bond to be recorded on the 20th day of August, 1834, in the office of the records of the said county of Peoria, a copy of the record of which, marked (D,) is herein filed as an exhibit herein.

Title Bond from Waters to Stillman and Stewart.

Exhibit D. Bond to Stillman and Stewart.

[Amendment made this 14th day of January, 1856, by leave of Court.] And your orator and oratrix show to your honor that the west half of the said tract of land does now, and did at the commencement of the suit, exceed in value the sum of five hundred dollars.

That afterwards, on the 20th day of August, 1834, the said Stewart assigned and transferred his said interest in said tract of land under the above recited bond, to one Francis Church, and thereupon the said Church entered into and upon the said east half of said tract of land jointly with the said Stillman, and the said Church caused the said assignment to be recorded on the day of August, 1834, in the office of the Recorder aforesaid, a copy of the record of

Exhibit E.

Assignment to Church.

the said assignment marked E, is hereunto filed as an exhibit herein.

That the said Waters, also on the second day of July, 1835, made, executed and delivered unto Moses Pettingal and William Walcott, his certain obligatory bearing date the day and year aforesaid, by which he bound himself, for certain considerations and upon certain conditions, in said bond expressed to convey to the said Pettingal and Walcott, the west half of the said half-quarter section of land, together with other parcels of land in said bond described, a copy of which, said bond marked F, is herewith filed as part of the bill.

Bond to Pettingal & Walcott. Exhibit F.

That afterwards, to wit: on the day of 1835, the said Pettingall and Walcott assigned the said last mentioned writing obligatory to one Aaron Russell, who thereupon entered into and upon the possession of said West half of said tract of land, and in said year erected thereon a large two-story brick house, and also a large barn, all of the value and cost of at least three thousand dollars, and made other improvements thereon, of the value and cost of five hundred dollars, and retained possession of the same until his death in the Fall of 1838; that the said Russell departed this life on the day of 1838, leaving his widow him surviving, but no children or other heirs at law residing in said State of Illinois; that after the death of the said Russell, his said widow retained possession of the said parcel of land for more than a year after the death of the said Russell, when she also departed this life.

Assignment by Pettingal and Walcott to Aaron Russell.

Improvements by Russell.

Death of Russell.

That after the death of the said Russell, to wit: on the day of 1838, administration of the goods and chattels of the said Russell was, in due form of law, granted by the proper Court to Jacob Gale and Enoch Cross, who, upon the death of the said widow of the said Russell, entered into possession of the said West half of the said parcel of land, and continued and remained in possession thereof until they were evicted and deforced from the same as hereinafter mentioned.

Grant of administration on Russell's estate.

Possession by his administrators.

And your orator and oratrix further show that the said Stephen Stellman, combining and confederating with one Aquilla Wrenn and William Frisby, to cheat and defraud the said Aaron Russell and others interested in and

claiming title to the tract of land aforesaid, and pretending that he was entitled to a right of pre-emption of the same under the provisions of an act of Congress approved the 19th of June, 1834, entitled, "An act to revise an act entitled, an act to grant pre-emption rights to settlers on the public lands," approved May 29th, 1830, and fraudulently availing himself of the possession of the East half of said tract, which he had acquired under and by the said writing obligatory, made and delivered to him by the said Waters as aforesaid, and which he had also acquired by and with the consent of the said Waters as aforesaid, and the said Stillman, Wren and Frisby, then having full notice and knowledge of the allegations and premises above herein set forth, filed in the office of the Register of the Land Office at Quincey, on the 15th day of June, 1836, his affidavit, dated on the 8th day of said last mentioned month, stating therein that in the year 1833, he cultivated and plowed several acres of the said east half of the said south-east quarter of section four, with sufficient fence, that in said year he raised corn and onions in said inclosure; also, beans, potatoes, and planted fruit trees, that he had a log cabin built on said land, but being unmarried, he boarded with families adjoining, and that he continued in possession on the 19th day of June, 1834, and also filed therewith in the Land Office aforesaid, the affidavit of two other persons corroborative and confirmatory of the facts stated in said affidavit, copies of which said several affidavits, marked G, are herewith filed as exhibits herein.

Stillman's affts. for pre emption.

Affidavit of Stillman, Exhibit G.

That afterwards, to wit: on the 9th day of June, 1836, and before the filing of his said affidavits and proof in the said land office, and before making application for his pre-emption under the act of Congress last aforesaid, the said Stillman, by his deed bearing date the day and year last aforesaid, bargained, sold and conveyed to said Aquilla Wrenn, now deceased, a certain part and portion of the said half-quarter section of land described as follows, to wit: commencing on the south boundary line of said quarter section twenty (20) rods from the east end thereof, and running thence due west (60) sixty rods; thence due north (160) one hundred and sixty rods; thence due east (60) sixty rods; thence due south and back to the beginning (160) one hundred and sixty rods, which said deed was, on the 11th day of August, 1836, filed for recording in the office of the said Recorder of Peoria county, a copy of which record of said deed, marked H, is herewith filed as an exhibit herein.

Deed from Stillman to Wrenn, Exhibit H.

That upon the application of the said Stillman being made at

the Land Office aforesaid, upon the affidavits and proofs aforesaid, for a pre-emption to the said parcel of land, the Register and Receiver of said office declined and refused to allow the same, because they had previously allowed and adjudged to the said Waters a pre-emption therefor, but referred the same to the Commissioner of the General Land Office for his adjudication and decision, and that the said Commissioner, by his letter of the 2nd day of May, 1838, directed the said Register and Receiver, if satisfied of the truth of the said affidavits and proofs of the said Stillman, to permit him to enter the said tract of land under his said application for a pre-emption, a copy of which said letter, marked I, is herewith filed as an exhibit herein.

Letter of Com'r, Exhibit (I.)

That the said Stephen Stillman departed this life on the ——— day of March, 1837.

That afterwards, to wit: on the 23d day of February, 1841, the said Aquilla Wrenn and his wife, by this deed, bearing date the day and year aforesaid, bargained, sold and conveyed the west half of the said half-quarter section of land unto the said Isaac Underhill, who then had full notice and knowledge of the premises and allegations herein and above set forth, (a copy of which said deed marked R. is herewith filed as an exhibit herein,) and thereupon the said Underhill entered into possession of the said parcel of land conveyed to him as aforesaid, and hath ever since been and is now in the possession of the same, and that he hath ever since been in the receipt and permanency of the profits and rents of the same amounting to a large sum, to wit: the sum of twenty thousand dollars.

Deed from Wrenn to Underhill. Exhibit R.

That on or about the 16th day of July, 1838, and more than one year after the death of the said Stillman, the said Wrenn and Frisby, employed an agent to proceed to Quincy to make application at said Land Office for the entry and purchase of the said half-quarter section of land under the affidavits and proofs filed therein by the said Stillman, as aforesaid, that the said agent on said last mentioned day filed in said office an application in the name of himself, as the agent of the heirs at law of the said Stillman, for the purchase and entry of said tract of land, without the knowledge, consent and authority of said heirs at law of said Stillman, a copy of which said application, marked J, is herewith filed as an explicit herein.

Exhibit J. Application of Stillman's heirs.

That, thereupon the Register and Receiver of the said Land Office, acting under the direction and instruction of the Commissioners of the General Land Office, con-

tained in the letter of the said Commissioners above mentioned, allowed and permitted the said tract of land to be entered and purchased on the said application, and thereupon issued a certificate of purchase therefor, in the name of the said Stephen Stillman, and delivered to the said agent a duplicate receipt for the money paid on said purchase; also in the name of the said Stillman, copies of which said certificate and duplicate receipt, marked K, are herewith filed as an exhibit herein.

That the said purchase and entry of said land was made with the proper funds and moneys of the said Wrenn and Frisby, and not with the funds and moneys of the said Stephen Stillman, or of his heirs at law, but that the said entry and purchase was made by the said Wrenn and Frisby, without the knowledge or authority of the said heirs at law of the said Stillman.

That the said Wrenn and Frisby, after making the entry aforesaid, employed certain agents, residing in Washington city, to procure, and who did procure a patent to be issued on said entry and purchase for said tract of land, out of the due course and order of business observed in the General Land Office, and that said patent, dated the 5th day of December, 1838, was issued in the name of the said Stillman, and transmitted to the said Wrenn and Frisby, a copy of which, marked L, is herewith filed as an exhibit herein.

Copy of patent to Stillman. Exhibit. D.

That the said Wrenn, immediately after obtaining and receiving the said patent, with force and violence, and with the aid of divers persons him assisting, ousted and deforced the said Gale and Cross from, and of the possession of the said west half of the said half-quarter section of land, which possession, when so ousted and deforced, they had and held as the administrators of the said Aaron Russell.

That the said Gale and Cross, administrators of the said Russell as aforesaid, after their eviction and deforcement from the premises aforesaid, instituted as such administrator's suit in the Peoria Circuit Court in the name of the said Pettingal and Walcott, as aforesaid, for their use as such administrators on the said bond executed by the said Waters to the said Pettingal and Wolcott, as aforesaid, against the said Waters, and by the judgment and consideration of said Court, afterwards, at the October term of said Court, in the year 1843, recovered against said defendants in said action the sum of three thousand dollars in debt, and also the sum of three thousand dollars in damages, besides the costs of said suit, a copy of which judgment, marked M, is herewith filed as an exhibit herein.

Copy of judg't Exhibit M.

That afterwards, to wit: on the 22d day of June, 1847, the

said plts., Gale and Cross, administrators as aforesaid, for having execution of their judgment aforesaid, caused to be issued by the Clerk of said Circuit Court, a certain writ of execution directed to the Sheriff of the said county of Peoria, whereby, after reciting therein the judgment aforesaid, the said Sheriff was commanded, that of the goods and chattels, lands and tenements of the said widow and heirs of the said Waters, defendants in said action, that he cause to be made the aforesaid sums of money, with interest thereon, together with the costs of said suit, and that he have those moneys ready, &c.

That afterwards, to wit: on the 25th day of June, 1847, the said Sheriff, in pursuance of the command of said writ, levied upon among other lands as the property of the defts. in said action, the south-east quarter of said section four, (which included the said half-quarter section,) and after having given due notice of the time and place of the sale of the lands so levied on by him as aforesaid, did, on the 31st day of July, 1847, offer the said lands at the Court House door, in the town of Peoria, in the county aforesaid, and, thereupon, one Charles Ballance bid on and for the said south-east quarter of said section four, the sum of five dollars, and he being the highest and best bidder, the same was openly struck off to him, for the sum of money aforesaid, and the said Sheriff, thereupon, made and delivered to the said Charles Ballance, a cetificate of his said purchase, copies of which said execution and the Sheriff's return thereon endorsed, marked M., are herewith filed as exhibits herein.

Copies of Ex'n & Shf's return. Exhibit M.

That afterwards, to wit: on the day of the said Charles Ballance, assigned the said certificate of purchase to your oratrix Maria, and that afterwards, on the 12th day of December, 1840, the said land not having been redeemed in conformity with the statute of the State of Illinois, in such case made and provided, the said Sheriff, by his deed bearing date the day and year aforesaid, conveyed the said south-east quarter of said section four to your oratrix in fee simple, a copy of which deed, marked O, is herewith filed as an exhibit herein.

Sh'ffs. deed to Maria Harkness. Exhibit O.

That afterwards, on the 25th day of February, 1848, the said Henry Waters and his wife, Clark Waters and his wife, Charles Waters, Joseph Cassell and Sophronia, his wife, (late Sophronia Nicholson,) and Isaac Waters and his wife, (the said Eben Waters having departed this life, leaving as his heirs at law, him surviving his said mother, and his said brothers and sisters,) by their deed bearing date the day and year aforesaid, conveyed to your oratrix, the said Maria, all

their right, title, interest and estate in said south-east quarter of section four, a copy of which said deed, marked P, is made an exhibit herein.

To the end, therefore, that the said Isaac Underhill may show, if he can, why your orator and oratrix should not have the relief hereby and hereinafter prayed, and may, according to the best and utmost of his knowledge, remembrance and belief, full, true, direct and perfect answer make to all and singular, the matter and premises herein before stated and set forth as fully and particularly as if the same were hereinafter repeated, and he thereunto distinctly and particularly interrogated, &c., and upon the premises herein stated being found to be true, your orator and oratrix pray, that your honor will order and adjudge that they have and recover of and from the said Isaac Underhill, the said west half of the said east half of said quarter section of land above described, that he be required to convey the same to your orator and oratrix for the rents and profits of the same that have accrued while the same has been in his possession as aforesaid, and that your orator and oratrix may have such further and other relief in the premises as may be consistent with equity and good conscience.

May it please your honor, to grant unto your orator and oratrix the most gracious writ of Subpœna of the United States of America to be directed to the said Isaac Underhill, thereby commanding him at a certain day, personally to be and appear before your honor in this honorable Court, and then and there to answer all and singular, the premises, and to stand to perform and abide such order and decree therein as to this honorable Court shall seem meet, and your orator and oratrix will ever pray, &c.

JAMES P. HARKNESS,
and MARIA, his wife,
Complainants.

GROVE & MCCOY, Peoria Illinois.
E. S. TERRY, Rockville, Indiana.
WILLIAMS & LAWRENCE, Quincy, Illinois.
Solicitors.

Endorsed.
Filed Aug. 30, 1854.
WM. POPE,
Clerk.

The Exhibits referred to in the foregoing bill of complaint are in the words and figures following, to wit:

Exhibit "A."

No. 3886.

7 August, 1835.

I do solemnly swear that I am an actual settler and housekeeper on a tract of public land, viz: the east half of the south-east quarter of section No. four, in township No. eight, north of the base line of range No. eight, east of the fourth principal meridian, and hereby apply to enter the said half quarter section of land under the provisions of an act of Congress approved on the fifth day of April, 1832, entitled, "An Act supplementary to the several laws for the sale of public lands," which will include my improvement.

ISAAC WATERS.

Sworn to and subscribed before me, an acting Justice of the Peace in and for the county of Peoria, State of Illinois, this 24th September, 1832.

ANDREW M. HUNT, [SEAL.]
J. Peace.

I do solemnly swear that Isaac Waters is an actual settler and housekeeper on a tract of public land, viz: the east half of the south-east quarter of section No. four in township No. eight, north of the base line of range No. eight, east of the fourth principal meridian, and I do further swear that I am in no wise interested in procuring a pre-emption right to the said half quarter section in favor of the said Isaac Waters.

JOHN G. TRAIL.

Sworn to and subscribed before me, an acting Justice of the Peace in and for the county of Peoria, this 24th day of September, 1832.

ANDREW M. HUNT, [SEAL.]
J. Peace.

State of Illinois, Peoria County, *ss.*

I, Isaac Waters, Clerk of the Commissioners' Court in and for the said county, do hereby certify that Andrew M. Hunt, Esq., before whom the within affidavits of Isaac Waters and John G. Trail were taken, was, at the time, an acting Justice of the Peace, regularly commissioned and qualified. Full faith and credit is due to his official acts.

In testimony whereof I have hereunto set my hand and seal of the said county Peoria, Sept. 24th, 1832.

[SEAL.]

ISAAC WATERS,
Clerk Com'rs Court, &c.

LAND OFFICE, QUINCY, January 2d, 1854.

I hereby certify that the foregoing affidavits and certificates of Clerk are true and correct copies of the original now on file in this office.

A. C. MARSH,
Register.

Endorsed.
Filed August 30, 1854.
WM. POPE,
Clerk.

Exhibits B. and C.

No. 3886.

[Duplicate.]

RECEIVER'S OFFICE, QUINCY, ILLINOIS, August 7th, 1835.

Received from Isaac Waters, of Peoria county, Illinois, the sum of one hundred dollars and — cents, being in full payment for the east half of the south-east quarter of section No. four in township No. eight, north of the base line of range No. eight, east of the 4th principal meridian, containing eighty acres and 100(th) of an acre, at the rate of *of* one dollar and twenty-five cents per acre. Per act 1832.

$100.00. THO. CARLIN,
Receiver.

State of Illinois, County of Peoria, *ss.*

I, Jacob Gale, Clerk of the Circuit Court, and ex-officio Recorder of the county of Peoria, in the State of Illinois, do hereby certify that the foregoing is a full and correct copy from the records of a Receiver's certificate, as the same stands recorded on page 176 in book G, in the Recorder's Office in said county, filed September 10th, A. D., 1836, for record.

In witness whereof I hereto set my hand and affix the seal of said Court, at my office in Peoria, this twenty-fourth [SEAL.] day of April, in the year of our Lord one thousand eight hundred and fifty-four.

JACOB GALE,
Clerk and Recorder.

Endorsed.
Filed Aug. 30, 1854.
WM. POPE,
Clerk.

Exhibit D.

Know all men by these presents, that I, Isaac Waters, of the county of Peoria and State of Illinois, am held and firmly bound unto Stephen Stillman and William A. Stewart, of the same place, their heirs or assigns, in the penal sum of five hundred dollars, current money of the United States, for the payment of which well and truly to be made and performed, I bind myself, my heirs, executors, administrators and assigns firmly by these presents. Witness my hand and seal at Peoria, this thirteenth day of July, 1833.

Now, the condition of the above obligation is such, that whereas, Isaac Waters and Stephen Stillman did jointly, and by mutual consent, cultivate and improve the east half of the south-east quarter of section four in township eight, north of the base line in range eight, east of the fourth principal meridian; and whereas, the said land (being eighty acres) came under the last act of Congress, granting pre-emption rights, and the said Stillman at the time of proving the right to said land, was confined to a bed of sickness, it was mutually agreed that the proof should be made in the name of Isaac Waters, which was done with the understanding that as soon as a title should be obtained by the said Isaac Waters, he should make to Stillman a clear deed to the east half of said tract of land, (the above named Stewart having bought an undivided half of Stillman's half of said tract,) he, the said Stewart, to pay one-half of the whole purchase money (fifty dollars) at any time when required to be paid into the Land Office.

Now, if the said I. Waters makes to the said Stillman and Stewart a deed to the said land (being forty acres) as above described, then this obligation to be void, otherwise to remain in full force. ISAAC WATERS.

Witness, RALPH HAMLIN.

State of Illinois, County of Peoria, *ss.*

I, Jacob Gale, Clerk of the Circuit Court and ex-officio Recorder of the County of Peoria, in the State of Illinois, do hereby certify that the foregoing is a full and correct copy from the records of a bond or instrument, as the same stands recorded on pages 180 and 181 in book D. in the Recorder's Office in said county, filed for record August 2d, A. D., 1834.

In testimony whereof I hereto set my hand and affix the seal of said Court at my office in Peoria, this twenty-fourth [SEAL] day of April, in the year of our Lord one thousand eight hundred and fifty-four. JACOB GALE,

Clerk and Recorder.

Endorsed.

Filed Aug. 30, 1834.

WM. POPE,
Clerk.

Exhibit "E."

Refer pages 180 and 181.

Assignment on bond of Waters to Stillman and Stewart. For and in consideration of the sum of five hundred dollars to me in hand paid, the receipt whereof I do hereby acknowledge, I assign all my right, title, interest and claim unto Francis Church, of the within bond, and authorise the within named Isaac Waters to make and execute a deed unto the said Church, the same as he is bound to do to me; the said Francis Church has agreed to pay fifty dollars, which the within bond compels me to pay, which is the consideration of this agreement; the above tract of land is divided by agreement between S. Stillman and myself, he taking the east half of the tract. WM. A. STEWART.

Dated August 20th, 1834.

RALPH HAMLIN.

State of Illinois, County of Peoria, *ss.*

I, Jacob Gale, Clerk of the Circuit Court and ex-officio Recorder of the County of Peoria, in the State of Illinois, do hereby certify that the foregoing is a full and correct copy from the records of an assignment of bond as the same is recorded on page 189 in book D. in my office, August, A. D., 1834, and appears from its position on the records.

In witness whereof I hereto set my hand and affix the seal of said Court at Peoria, this 22d day of October, A. D., 1853. JACOB GALE,

[SEAL.]

Clerk and Recorder.

Endorsed.

Filed August 30th, 1834.

WM. POPE,
Clerk.

Exhibit "F."

Copy of Instrument declared on in suit.

MOSES PETTENGILL and WILLIAM WOLCOTT for the use of ENOCH CROSS and JACOB GALE, administrators of AARON RUSSELL, deceased,
vs.
ABIGAIL WATERS, JAMES P. HARKNESS, MARY HARKNESS, SOPHRONIA NICHOLSON, CLARK WATERS, EBER WATERS, CHARLES WATERS, HENRY WATERS and ISAAC WATERS.

Know all men by these presents, that I, Isaac Waters, of Peoria county, State of Illinois, am held and firmly bound unto

Moses Pettengill and William Wolcott, in the penal sum of three thousand dollars current money of the United States, for the payment of which, well and truly to be made, I hereby bind myself, my heirs and assigns firmly by these presents. Sealed with my seal, and dated at Peoria, this second day of July, A. D., 1835.

The condition of the above obligation is such, that whereas, the said Moses Pettengill and William Wolcott have this day purchased of the said Isaac Waters the west half of forty acres of the east half of the south-east quarter of section No. four, in town No. eight, north of range No. eight, east of the fourth principal meridian, together with the fractional lots No. seven, eight and nine, in block No. in the town of Peoria, adjoining and lying in front of the south-westerly corner of the said forty acres (reference being had to the plat of said town,) for the sum of fifteen hundred dollars, and made payment of four hundred dollars, given their notes—one for one hundred dollars, payable in sixty days; one other note for five hundred dollars, payable on the first day of January next; and one other note for the residue, five hundred dollars, payable on the first day of July, A. D., 1836.

Now, if the payments shall be made on the said notes as aforesaid; then if the said Waters shall execute unto the said Moses Pettengill and William Wolcott, a good and sufficient warrantee deed of conveyance for the said tract of land, then this obligation to be null and void, otherwise to be and remain in full force and virtue. (Signed,)

ISAAC WATERS, [SEAL.]

Witness, LUCY PETTENGILL.

State of Illinois, Peoria County, *ss.*

I, Jacob Gale, Clerk of the Circuit Court of said Peoria County, certify that the above is truly copied from the files in said cause in my office.

Witness my hand and the seal of said Court, this 25th
[SEAL.] day of April, A. D., 1834.

JACOB GALE,
Clerk.

(Endorsed.)
Filed August 30th, 1832.

WM. POPE,
Clerk.

Exhibit "G."

State of Illinois, Peoria County.

I, Stephen Stillman, of Peoria County, in the State of Illinois, do solemn swear, that in the year A. D., 1833, I plowed and cultivated several acres of ground on the east half of the south-east quarter of section No. four, in township No. eight north, in range No. eight, east of the fourth principal meridian, and that the said ground was enclosed by a good and sufficient fence.

Question by Magistrate. Did you raise any crop of grain or vegetables on said quarter? and if any, what were they?

Answer by deponent. In the year, A. D., 1833, I raised some corn and onions in the said enclosure on the said east half of the said quarter, and also some beans, potatoes; and I planted in the same some fruit trees, such as apple trees, cherry trees, and gooseberry bushes.

Question. Had you any house erected on said east half?

Answer. I had a log cabin built on it, but being an unmarried man, I boarded in the families of different persons residing on adjoining quarters, and I continued in possession of the said east half on the nineteenth day of June, A. D., 1834. A pre-emption has already been obtained to the west half of the said quarter, and I now apply for one to the said east half of the said quarter section.

STEPHEN STILLMAN.

Subscribed and sworn to before me, this 8th day of June, A. D., 1836.

A. M. HUNT,
Justice of the Peace.

The Testimony of Riley Germen.

Question. Do you know anything respecting Stephen Stillman's having cultivated the east half of the south-east quarter of section No. four, in township No. 8 N., in range No. 8, east of the fourth principal meridian?

Answer of witness. Stephen Stillman, in the year A. D., 1833, enclosed several acres of ground on the east half of the said quarter, and had then plowed and planted some onions therein and also some apple trees; he erected a log cabin on the said east half of the said quarter, but being an unmarried man and a cripple, he boarded in the families of persons residing on adjoining quarter section; he continued in possession of the said east half on the nineteenth day of June, A. D., 1834.

W. R. GERMEN.

Subscribed and sworn to before me, this 8th day of June, A. D., 1836.

A. M. HUNT,
Justice of the Peace.

The Testimony of Seth Fulton.

Question by Magistrate. Do you know anything respecting Stephen Stillman's having cultivated the east half of the south-east quarter of section No. four, in township No. 8 north, and in range No. 8, east of the fourth principal meridian?

Answer of witness. Stephen Stillman, in the year A. D., 1833, enclosed several acres of ground on the east half of the said south-east quarter and had them plowed, and planted some onions therin, and also some apple trees; he erected a log cabin on the said east half of the said quarter, but being an unmarried man, he resided, during that year, in the families of different persons residing in adjoining quarters; he continued in possession of the said east half on the 19th day of June, A. D., 1834.

SETH FULTON.

Subscribed and sworn to before me, this 9th day of June, 1836.

A. M. HUNT,
Justice of the Peace.

We, Joseph C. Frye, E. S. Buxton, do hereby certify that we are neighbors of Seth Fulton and William Riley Germen, and that their testimony is entitled to full credit.

JOSEPH C. FRYE.
EDMOND S. BUXTON.

I, Andrew M. Hunt, a Justice of the Peace in and for the said County, do hereby certify that the said Stephen Stillman, William Riley Germen, and Seth Fulton, are men of veracity, and their testimony is entitled to full credit.

A. M. HUNT.

June 9th, A. D., 1836.

STATE OF ILLINOIS, } Clerk's Office, County Commissioners'
Peoria County. } Court.

I, William Mitchell, Clerk of the County Commissioners' Court for said county, do hereby certify that A. M. Hunt, Esq., whose name appears to the foregoing certificate, was, at the time the same was made, an acting Justice of the Peace in and for said county, regularly commissioned and qualified, and, as such, full faith and credit are and of right ought to be given to all his official acts.

Given under my hand and seal of said Court, at Peoria,
[SEAL.] this ninth day of June, A. D., 1836.

WILLIAM MITCHELL,
Clerk of Co. Court Co. P. C.

Exhibit I.

May 2d, 1838.

GENTLEMEN: I herewith transmit to you the proof filed in your office on 14th June, 1836, of the right of Stephen Stillman to the E. ½ S. E. qr. Sect. 4 T. 8 n. R. 8 E. under the act of 19 June, 1834, which, it appears, was forwarded to this office on account of the said tract having been entered in the name of Isaac Waters, per certif. 3886, under the act of 5th Apr., 1832.

Accompanying said proof of Stillman's are affiidavits going to show that Isaac Waters, with his family, in September, 1832, remained *one night* in a log pen without a roof, and upon this based his right as an actual settler upon the land, he having, on the 24th Sept., 1852, taken an oath thus: "I am an actual settler, and referring to the *time* when said affidavit was made and the testimony of the Justice of the Peace before whom said affidavit was taken, showed that "he went at the request of said Waters, on the said tract on that day, (24th Sept., 1832,) and the said Waters stated that he had been there over night with his family, for the purpose of obtaining a pre-emption right, and that he had not resided on said tract before that night, and that said Waters, after making said affidavit, returned to the town of Peoria, and continued to *to* reside there until a short time before his death."

A copy of the said affidavit of Waters is herewith transmitted, and it speaks the language of evasion, first above quoted. The act of 5th April, 1835, requires that the claimant shall have been *an actual settler and house keeper* on the tract claimed on the *5th Apr.*, 1832, and did not entitle any one, altho' a settler and house-keeper, who became one *after* that date, much less an individual who, by reason of the occupation of a mere shelter for one night, fraudulently based a claim to the tract upon which such shelter was raised, under the act before mentioned. If satisfied of the truth of affidavits herewith sent you, you will permit Mr. Stillman to enter the tract as the entry of Waters, being made in *fund* is void, upon your so doing you will immediately report the fact, so that an order may be given to the Receiver to refund the money paid on the entry of Waters.

Respectfully your obedient serv't,

JAS. WHITCOMB,

Commissioner, Register and Receiver,

Quincy, Illinois.

Exhibit K.

No. 13684.

LAND OFFICE, QUINCY, ILLINOIS, 16th of July, 1838.

It is hereby certified that, in pursuance of law, Stephen Stillman, of the county of Peoria, and State of Illinois, on this day purchased of the Register of this Office, the lot or east half of south-east quarter of section No. four, in township No. eight, north of the base line of range No. eight, east of the 4th principal meredian, containing eighty acres, at the rate of one dollar and twenty-five cents per acre, amounting to one hundred dollars and cents, for which the said Stephen Stillman has made payment in full as required by law. Now, therefore, be it known, that on presentation of this certificate to the Commissioners of the General Land Office, the said Stephen Stillman shall be entitled to receive a patent for the lot above described

SAML. LEECH,
Register.

PRE-EMPT. ACT OF 1834.

Instructions 2d of May, and 8th of September, 1838.

The tract of land within described, was entered in the names of the heirs of Stephen Stillman, deceased, (16 in number,) and this certificate is issued in pursuance of instructions contained in Commissioners' letter, dated 8th September, 1838.

SAML. LEECH,
Register.

L. O., Quincy, Ills., 26th of September, 1838.

RECEIVER'S OFFICE, QUINCY, ILLINOIS, July 16th, 1838.

No. 13684.

Received from Isaiah Stillman, Henry B. Stillman, Mary Stillman, Caroline Menard, Martha Beers, William Stewart, James Stewart, Abigail Stewart, Mary Stewart, Roxana Stewart, Joseph Stewart, Benjamin Stewart, Mary Clark, Russell Clark, William Clark, and Edward Clark, heirs of Stephen Stillman, late of Peoria county, Illinois, the sum of one hundred dollars, being in full payment for the east half of the south east quarter of section No. four, in township No. eight, north of range No. eight, east of the fourth principal meredian, containing eighty acres, at the of one dollar and twenty-five cents an acre, 100-00.

THOMAS CARTIN,
Receiver.

GENERAL LAND OFFICE, Sept. 19, 1834.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the annexed *seven pages* are true and literal exemplifications of the originals on file and record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

[SEAL.]

JOHN WILSON,
Commissioner of the General Land Office.

Exhibit "H."

This indenture, made and entered into this ninth day of June, in the year of our Lord one thousand eight hundred and thirty-six, between Stephen Stillman, of the County of Peoria, and State of Illinois, of the first part, and Aquilla Wren, of the County of Peoria, and State of Illinois, of the second part, Witnesseth that the said Stephen Stillman, party of the first part, for and in consideration of the sum of four thousand dollars in hand first, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs and assigns, the following described tract of land, situated, lying and being in the County of Peoria, in the State of Illinois, and being a part of the east half of the south-east quarter of section number four, in township number (8) eight north, and in range number (8) eight, east of the fourth principal meridian, and bound and described as follows, to wit: commencing on the south boundary line of said quarter section twenty rods from the east end of the same, and running thence due west (60) sixty rods, thence due north (160) one hundred and sixty rods, thence due east (60) sixty rods, thence due south and back to the beginning (160) one hundred and sixty rods, together with all and singular, the appurtenances thereunto belonging, or in anywise appertaining, to have and to hold the above described premises unto the said party of the second part, his heirs and assigns forever. And the said Stephen Stillman, the aforesaid premises unto the said party of the second part, his heirs and assigns, doth and will warrant, and forever defend by these presents against all persons claiming through him. In witness whereof the said party of the first part have hereunto set his hand and affixed his seal the day and year first above written.

STEPHEN STILLMAN, [SEAL.]

Signed, sealed and delivered
in presence of

State of Illinois, Peoria County, *ss.*

I, Andrew M. Hunt, a Justice of the Peace of the county, do certify that Stephen Stillman, whose signature appears to the foregoing deed of conveyance, and who is personally known to me to be the identical person who signed the same, this day appeared before me and acknowledged that he had signed, sealed and delivered the same as his free act and deed for the uses and purposes therein expressed.

Given under my hand and the seal of office at Peoria, this ninth day of June, in the year of our Lord one thousand eight hundred and thirty-six. A. M. HUNT, [SEAL.]
J. P.

State of Illinois, County of Peoria, *ss.*

I, Jacob Gale, Clerk of the Circuit Court and ex-officio Recorder of the County of Peoria, in the State of Illinois, do hereby certify that the foregoing is a full and correct copy from the records of a deed, and of the certificate of acknowledgment thereof, as the same stands recorded on pages 84 and 85 in book G., in the Recorder's Office in said county, filed August 11th, A. D., 1836.

In witness whereof I hereto set my hand and affix the seal of said Court at my office, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-four. JACOB GALE,
[SEAL.]
Clerk and Recorder.

Endorsed.
Filed August 30, 1834.
WM. POPE,
Clerk.

Exhibit B.

We, Aquilla Wren, and Clarissa, his wife, in consideration of the sum of five thousand dollars to us paid by Isaac Underhill, of Peoria county, the receipt whereof is hereby acknowledged, do by these presents, grant, sell and convey to the said Underhill, his heirs and assigns, the following described real estate, to wit: the west half of the east half of the south-east quarter of section No. four in township No. eight north, in range No. eight, east of the fourth principal meridian, excepting a certain part thereof, bounded as follows, to wit: beginning at a stone from which the north-west corner of the said south-east quarter of section four bears west two hundred and fifty links; thence east seven hundred and fifty links to a post; thence south four hun-

dred and ninety-five links to a post; thence south sixty-five degrees west, five hundred and ninety links to a post; thence north twenty-two degrees, west seven hundred and seventy-five links to the place of beginning, containing three acres and seventy-eight hundredths.

Also, excepting three acres and twenty-five hundredths of an acre, situated at the south-east corner of the said west half of the east half of the south-east quarter of section four, being thirteen rods wide on the north and south sides, and forty rods on the east and west sides, including the brick-house and improvements; and we warrant the above granted premises to the said Isaac Underhill, his heirs and assigns, against all claiming by, through or under us.

Witness our hands and seals this twenty-third day of February, A. D., 1841.

A. WREN, [SEAL.]
CLARISSA WREN, [SEAL.]

State of Illinois, County of Peoria.

This day appeared before me, William Mitchell, Clerk of the Circuit Court for Peoria county, Aquilla Wren and Clarissa, his wife, who are personally known to me to be the real persons whose names are subscribed to the foregoing deed as having executed the same, and acknowledged that they executed the same. And the said Clarissa, having been by me made acquainted with the contents of said deed, and examined separate and apart from her said husband, acknowledged that she executed the same and relinquished her right of dower to the lands and tenements therein mentioned voluntarily and freely, and without the compulsion of her said husband.

In testimony whereof I have hereunto set my hand and affixed
[SEAL.] the seal of the said Court this 8th day of March, 1841.

WILLIAM MITCHELL,
Clerk, pro tem.

State of Illinois, County of Peoria, *ss.*

I, Jacob Gale, Clerk of the Circuit Court, and ex-officio Recorder of Peoria County, in the State of Illinois, do hereby certify that the foregoing is a full and correct copy from the records of a deed and the certificate of acknowledgment thereof, as the same stands recorded on pages 522 and 523 in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said Circuit Court, at Peoria, this twenty-
[SEAL.] third day of August, in the year of our Lord one thousand eight hundred and fifty-four.

JACOB GALE,
Clerk and Recorder.

(Endorsed.)
Filed Aug. 30, 1834.
WM. POPE,
Clerk.

Exhibit J.

LAND OFFICE AT SPRINGFIELD, ILLINOIS, January 21st, 1856.

I, John Connelly, Sen'r, Register of the Land Office at Springfield, Illinois, do hereby certify that Josiah Stillman, Henry B. Stillman, Mary Stillman, Caroline Menard, Martha Beers, William Stewart, James Stewart, Abigail Stewart, Mary Stewart, Roxana Stewart, Joseph Stewart, Benjamin Stewart, Mary Clark, Russell Clark, William Clark and Edward Clark, heirs of Stephen Stillman, did, on the sixteen(th) day of July, in the year of our Lord eighteen hundred and thirty-eight, purchase of the General Government, at the Land Office at Quincy, Illinois, now Springfield, Illinois, the east half of the south-east quarter of section four, in township eight, north of range eight, east of the fourth principal meridian, containing eighty acres, and that said land, at the time of said purchase, was within the district of land subject to sale at Quincy, Illinois, now Springfield, Illinois, and rendered subject to sale by law, all of which appears of record in my office. Given under my hand the day and year first above written.

JOHN CONNELL, SEN'R,
Register of the United Land Office, Springfield, Illinois.

Exhibit L.

THE UNITED STATES OF AMERICA,
To all to whom these presents shall come, *greeting:*

Certificate No. 13684.

Whereas, Stephen Stillman, of Peoria county, Illinois, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Quincy, whereby it appears that full payment has been made by the said Stephen Stillman, according to the provisions of the act of Congress of the 24th of April, 1820, entitled, "An act making further provision for the sale of the public lands," for the east half of the

south-east quarter of section four, in township eight, north of the base line of range eight, east of the fourth principal meridian, in the District of lands subject to sale, at Quincy, Illinois, containing eighty acres, according to the official plat of the survey of the said laws, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Stephen Stillman.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant unto the said Stephen Stillman and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Stephen Stillman, and to his heirs and assigns forever.

In testimony whereof I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the fifth day of December, in the year of our Lord one thousand
[SEAL.] eight hundred and thirty-eight, and of the Independence of the United States, the sixty-third.

By the President, MARTIN VAN BUREN.

By M. VAN BUREN, JR.
Secretary.

H. M. GARLAND,
Recorder of the General Land Office.

Recorded Vol. 3, page 236.

GENERAL LAND OFFICE, Sept. 19th, 1854.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from the patent records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the
[SEAL.] city of Washington on the day and year above written.

JOHN WILSON,
Commissioner of the General Land Office.

Exhibit M.

At a Circuit Court, begun and held at the Court House in the town of Peoria, within and for the County of Peoria, and State of Illinois, on the third Monday in October, in the year of our Lord one thousand eight hundred and forty-three, being the

sixteenth day of the same month. Present, the Hon. John D. Caton, Associate Justice of the Supreme Court of the State of Illinois, assigned to perform the duties of Judge of the Ninth Judicial Circuit; Benjamin F. Fridley, Esq., State's Attorney; Smith Frye, Sheriff; William Mitchell, Clerk.

Saturday, October 28th, 1843.

Moses Pettengill, William Wolcott,
for the use of Enoch Cross and Jacob Gale,
Administrators of the estate of Aaron Russell, deceased.
vs.
Abigail Waters, James P. Harkness, Mary Harkness,
Sophronia Nicholson, Clark Waters, Eber Waters,
Charles Waters, Henry Waters, and Isaac Waters

This day came the plaintiffs, by Peters and Gale, their attorneys, and the defendants, by Charles Ballance, their attorney, and this cause came on to be heard upon the exception of the said defendants to the writ of enquiry and assessment of damages, which were argued by counsel, on consideration whereof, the Court being fully advised in the premises, overruled the said exceptions, and it appearing from the return of the Sheriff, of the proceedings had before him, under the writ of enquiry issued in this case, that the jury, after due consideration of the evidence, and after diligent enquiry, upon their oaths had assessed the damages, sustained by the plaintiffs, to three thousand dollars.

Therefore, it is considered, that the said plaintiffs have, and recover of the said defendants, the sum of three thousand dollars debt, and also the sum of three thousand dollars damages aforesaid, by the jury aforesaid, assessed, together with their costs and charges by them about their suit, in this behalf expended, and that execution issue therefor, and whenever execution shall issue, the Clerk shall endorse thereon the amount of damages assessed by the jury, with the costs of suit, and the Sheriff or Coroner shall only collect the amount so endorsed.

On which judgment an alias execution was issued, which, with the return of the then Sheriff of Peoria County, thereto, is as follows, to wit:

The People of the State of Illinois, to the Sheriff of Illinois County, *greeting:*

Whereas, by the consideration of our Circuit Court, held at Peoria in and for the county of Peoria, on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and forty-three, Moses Pettengill, and William Wolcott, for the use of Enoch Cross and Jacob Gale, administrators of the estate of Aaron Russell, decd., recovered judgment against Abigail

Waters, James P. Harkness, Mary Harkness, Sophronia Nicholson, Clark Waters, Eber Waters, Charles Waters, Henry Waters, and Isaac Waters, for the sum of three thousand dollars debt, and three thousand dollars damages, which the said Pettingill, and Wolcott, had sustained, by reason of the detention of said debt, and also for the further sum of twenty-six dollars and eighty-one and ¼ cents, costs of suit as appears of record.

We therefore command you, as we have heretofore commanded, that of the goods and chattels, lands and tenements of the said Abigail Waters, James P. Harkness Mary Harkness, Sophronia Nicholson, Clark Waters, Eber Waters, Charles Waters, Henry Waters and Isaac Waters, you cause to be made the aforesaid sum of money, together with interest on said judgment, at the rate of six per centum per annum from the time of recovering the same as aforesaid, until paid, and that you have the same ready as soon as may be to render unto the said Pettengill and Wolcott, for the use aforesaid, according to law. Hereof fail not, and make return of this writ, with your doings, ninety days after the date hereof.

Witness Jacob Gale, Clerk of our said Court, and the seal [SEAL.] thereof, at Peoria, this 22d day of June, in the year of our Lord one thousand eight hundred and forty-seven.

JACOB GALE,
Clerk.

Endorsed.

The Sheriff will only collect the sum of three thousand dollars, the damages aforesaid, and costs of suit, by order of Court.

JACOB GALE,
Clerk.

STATE OF ILLINOIS, }
Peoria County. } *ss.*

Sheriff's Return.

By virtue of the within execution to me directed from the Clerk of Circuit Court of Peoria County, I did, this 25th day of June, A. D., 1847, levy upon the following described real estate, to wit: the south-east quarter of section number four (4,) township number eight, north of range eight (8) east; also, the north-west quarter of section number four (4,) in township number eight, north of range five, east; also, the north-east qr. of section number four, in township eight, north of range five, east, and the north-east qr. of section number five, in township number eight, north of range five, east of the fourth principal meridian, and afterwards, to wit: on the 8th day of July, 1847, I advertized the said premises for sale at public auction, on the 31st

day of July, 1847, at between the hours of nine in the forenoon, and four o'clock in the afternoon of the same day, at the door of the Court House in the City of Peoria, by putting up written notices thereof, in three of the most public places in my country, a copy of which said advertisement is hereto attached, marked A, and make part of my return hereto, and afterwards, to wit: on the said 31st day of July, I attended at the place of sale, aforesaid, and at the hour of two o'clock, P. M., of the last day aforesaid, I offered in separate tracts or lots, the said land, the same being susceptible of division, and thereupon, Charles Ballance bid the sum of five hundred dollars for the first named tract, which, being the highest and best bid, was struck off to him, the said Charles Ballance, and said bid being insufficient to satisfy said execution, I offered the second named tract of land, whereupon Luke Wood bid the sum of three dollars and fifty cents therefor, which, being the highest and best bid, was struck off to him, the said Luke Wood, and said bid still being insufficient to satisfy said execution, I offered the third named tract of land, whereupon Luke Wood bid the sum of three dollars and fifty cents, which, being the highest and best bid, was struck off to him, the said Luke Wood, and said bid still being insufficient to satisfy said execution, I offered the fourth and last named lot or tract of land, whereupon Charles Ballance bid the sum of two dollars therefor, which, being the highest and best bid, was struck off to him, the said Charles Ballance, and a certificate of purchase delivered to said Ballance for each tract bid off by him, and duplicates thereof filed in the Recorder's Office, as required by law. I also delivered a certificate of purchase to Luke Wood, for each tract bid off by him, and duplicates thereof filed in the Recorder's Office, as required by law; and afterwards, to wit: on the 12th day of August, A. D., 1847, I did further levy upon the following described lot of land, to wit: the E. $\frac{1}{2}$ of the N. W. qr. of sec. No. 24, in township eight, north of the base line of range seven, east of the 4th principal meredian, and did on the same day, to wit: the 12th day of August, 1847, advertise the said premises for sale, by putting up printed notices thereof, in three of the most public places in my county, a copy of which said advertisement is hereto attached, marked B., and afterwards, to wit: on the 11th day of September, 1847, I attended at the Court House, the place appointed for the sale, and at the hour of two o'clock, P. M., of the last day aforesaid, offered the said premises for sale at public auction, and thereupon, William Hale bid the sum of five dollars therefor, which, being the highest and best bid, was struck off to him, the said William Hale, and a certificate of purchase delivered to the purchaser and a duplicate thereof filed in the Recorder's Office, according to law. This execution is therefore returned, not

satisfied in full, but credited with the amount of bids on the several tracts sold as stated in this return, which several amounts have been paid over to Jacob Gale, Clk. of Ct. Court of Peoria county, after deducting Sh'ffs fees for levy, advertising, &c.

WM. COMPHER.

Sept. 17, 1847. Shff. P. C.

(Attached.) Sheriff's Sale.

Notice of sale.

By virtue of a writ of alias fieri facias to me directed from the Circuit Court of Peoria County, in favor of Moses Pettengill and Wm. Wolcott, for the use of Enoch Cross and Jacob Gale, administrators of the estate of Aaron Russell, deceased, against Abigail Waters, James P. Harkness, Mary Harkness, Sophronia Nicholson, Clark Waters, Eber Waters, Charles Waters, Henry Waters and Isaac Waters, I have levied on the following described real estate, to wit: the south east quarter of section No. four (4), in township No. eight (8), north of range No. eight (8) east; also the north-west quarter of section No. four (4), in township No. eight (8), north of range No. five (5) east; also the north-east quarter of section No. four (4), in township eight (8), north of range No. five (5) east, and the north-east quarter of section No. five (5), in township No. eight (8), north of range No. five, east of the 4th principal meridian, which I shall expose to public sale on the 31st day of July, 1847, at the door of the Court House in the city of Peoria, to the highest and best bidder for ready money. Sale to be between the hours of 9 o'clock, A. M. and four o'clock, P. M.

WILLIAM COMPHER,

Dated July 8th, 1847. Sheriff Peoria County.

Sheriff's Sale.

By virtue of an alias fi. fa. to me directed from the Circuit Court of Peoria County, in favor of Moses Pettengill and Wm. Wolcott, for the use of Enoch Cross and Jacob Gale, administrators of the estate of Aaron Russell, deceased, against Abigail Waters, James P. Harkness, Mary Harkness, Sophronia Nicholson, Clark Waters, Eber Waters, Charles Waters, Henry Waters and Isaac Waters, I have levied on the following described real estate, to wit: the east half of the north-west quarter section number twenty-four (24), in township number eight (8), north of the base line of range number seven (7), east of the 4th principal meridian, which I shall expose to public sale on the 11th day of September, 1847, at the door of the Court House, in the city of Peoria, to the highest and best bidder for ready money. Sale to be between the hours of 9 o'clock, A. M. and four o'clock, P. M.

WILLIAM COMPHER,

Dated August 12, 1847. Sheriff Peoria County.

State of Illinois, Peoria County, *ss.*

I, Jacob Gale, Clerk of the Circuit Court within and for the County of Peoria, in the State of Illinois, do hereby certify that the foregoing is a correct transcript from the records of said Court of a judgment therein recorded in favor of Moses Pettengill and William Wolcott, for the use of Enoch Cross and Jacob Gale, administrators of the estate of Aaron Russell, deceased, against Abigail Waters, James P. Harkness, Sophronia Nicholson, Clark Waters, Eber Waters, Charles Waters, Henry Waters, Isaac Waters and Mary Harkness, and also a correct copy of an alias writ of fieri facias, and the Sheriff's return thereto issued on said judgment by the Clerk of said Court to the Sheriff of said county as the same remain on file, and on record in my office.

In witness whereof I hereto set my hand and affix the seal of said Circuit Court at my office in Peoria, this 23d day of August, A. D., 1834. JACOB GALE,
Clerk.

[SEAL.]

Endorsed.

Filed August 30, 1834.

WM. POPE,
Clerk.

Exhibit "O."

"March 8th, 1849."

Whereas, Moses Pettengill and William Wolcott, for the use of Enoch Cross and Jacob Gale, administrators of the estate of Aaron Russell, deceased, at the October term, A. D., 1843, of the Circuit Court for the County of Peoria and State of Illinois, recovered a judgment against Abigail Waters, James P. Harkness, Mary Harkness, Sophronia Nicholson, Clark Waters, Eber Waters, Charles Waters and Henry Waters and Isaac Waters, for the sum of three thousand dollars debt, and three thousand dollars damages and costs of suit, upon which judgment an execution was issued, dated on the twenty-second day of June, A. D., 1847, directed to William Compher, Sheriff of Peoria county, to execute, and by virtue of said execution, the said Sheriff levied upon the lands hereinafter described, and the same was struck off and sold to Chas. Ballance for seven dollars, he being the highest and best bidder therefor, and the time and place of sale thereof having been duly advertised according to law, and the said Charles Ballance having duly assigned his certificate of purchase to Maria Harkness.

Now, therefore, know all by this deed, that I, Wm. Compher, Sheriff of the County of Peoria, in consideration of the premises, have granted and sold, and do hereby convey to the said Maria Harkness, her heirs and assigns, the following described tracts

of land, to wit: two certain tracts or lots of land lying and situate in the County and State aforesaid, viz: the south-east quarter of section number four (4), in township number eight, north of range number eight (8) east, and the north-east quarter of section number five (5), in township number eight (8), north of range five (5), east of the fourth principal meridian, to have and to hold the said described premises with all the appurtenances thereto belonging to the said Maria Harkness, her heirs and assigns forever.

Witness my hand and seal this the fifteenth day of December, in the year of our Lord one thousand eight hundred and forty-eight. WILLIAM COMPHER, [SEAL.]

Sheriff Peoria County, Ills.

State of Illinois, Peoria County, *ss.*

This day personally appered before me, Jacob Gale, Clerk of the Circuit Court within and for said county, Wm. Compher, personally known to me to be the real person whose name appears subscribed to the above deed of conveyance, as having executed the same as Sheriff of said county, and acknowledged the execution thereof to be his free act and deed for the uses and purposes, and in the capacity therein set forth.

In testimony whereof I have hereunto set my hand and seal of said Court at Peoria, this fifteenth day of December, A. D., 1848. [SEAL.] JACOB GALE,

Clerk.

State of Illinois, County of Peoria, *ss.*

I, Jacob Gale, Clerk of the Circuit Court and ex-officio Recorder of Peoria County, in the State of Illinois, do hereby certify that the foregoing is a full and correct copy from the records of a deed and of the certificate of acknowledgment thereof, as the same stand recorded on page 493 in book U in the Recorder's Office, in said county, filed March 8th, A. D., 1849.

In witness whereof I have hereto set my hand and affix(ed) the seal of said Court, at my office in Peoria, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-four. [SEAL]

JACOB GALE,

Recorder and Clerk.

Endorsed.

Filed Aug. 30, 1834.

WM. POPE,

Clerk.

Exhibit P.

This indenture, made this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and forty-eight, between Henry Waters and Aurela Waters, his wife, Clark Wa-

ters and Owilla Waters, his wife, Charles Waters and Mary Waters, his wife, Joseph Caswell and Sophronia Caswell, his wife, Isaac Waters and Abigail Waters, parties of the first part, and Maria Harkness, of the second part, Witnesseth, that the said parties of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, remise, release, transfer and forever quit unto the said party of the second part, her heirs and assigns, all their right, title, interest and claim, both legal and equitable, of, in and to those certain tracts or parcels of land situated in the County of Peoria and State of Illinois, known and described as follows, to wit: the east half of the north-west quarter of section twenty-four (24,) in township eight (8) north of the base line of range seven (7) east; the east half of the south-east quarter of section four (4,) in township eight (8) north of the base line of range eight (8) east; fractional lots No. seven (7,) eight (8) and nine (9,) in block No. twenty-five (25) in the city of Peoria, laid out on the fractional quarter of the north-east of section nine (9,) in township eight north 8 east forty-two acres off of the north part of the north-east quarter of section five (5,) sixty (60) rods off of the north end of the north-west quarter of section four (4,) and sixty (60) rods off of the north end of the west half of the north-east quarter of section four (4,) the three last being in township eight, north of the base line of range five (5) east, containing one hundred and thirty acres, more or less. Also all the right, title and interest of the said parties of the first part, of, in and to certain lot or lots in the city of Peoria, being the same lot or lots as conveyed to Isaac Waters by a deed of conveyance from Augustin Rogue, dated the sixth day of February, A. D., 1822, all the above described premises being of the fourth principal meridian; together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining unto the said party of the second part, her heirs and assigns forever.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ABIGAIL WATERS, [SEAL.]
HENRY WATERS, [SEAL.]
AURILIA WATERS, [SEAL.]
ISAAC WATERS, [SEAL.]
JOSEPH CASWELL, [SEAL.]
SOPHRONIA CASWELL, [SEAL.]
CLARK WATERS, [SEAL.]

State of Illinois, Peoria County, *ss.*

I, Clark B. Stebbens, a Justice of the Peace within and for said county, do certify that on this day personally appeared before me the within named Joseph Caswell and Sophronia Caswell, his wife, whose signatures appear to the foregoing deed, and who are personally known to me to be the real persons who subscribed and executed the same, and acknowledged the same to be their free act and deed.

And Sophronia Caswell, who is above the age of eighteen years, having been by me made acquainted with the contents of said deed, and examined separate and apart from her said husband, acknowledged that she executed the same voluntarily, freely and without the compulsion of her said husband, and did not wish to retract the same.

Given under my hand and seal this twenty-fifth day of February, 1848.

CLARK B. STEBBINS, [SEAL.]
J. P.

State of Illinois, Jo. Davis County.

I, Richard Seal, Clerk of the County Commissioners' Court, in and for said county, do hereby certify that Clark Waters, Owilla Waters, his wife, Isaac Waters, whose signatures appear to the foregoing deed of conveyance, and who are personally known to me to be the identical persons who signed the same, this day appeared before me and acknowledged that they had signed, sealed and delivered the same as their free act and deed for the uses and purposes therein expressed.

And Owilla Waters, wife of the said Clark Waters, having been by me made acquainted with the contents of said deed, and being by me examined, separate and apart from her said husband, acknowledged that she had executed the same, and relinquished her dower to the lands and tenements therein, conveyed voluntarily, freely and without the compulsion of her said husband.

In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Galena, this 15th day of April, [SEAL.] A. D., 1848.

RICHARD SEAL,
Clerk.

State of Illinois, Peoria County, *ss.*

I, Clark B. Stebbins, a Justice of the Peace within and for said county, do hereby certify, that on this day personally appeared before me the within named Henry Waters and Abigail Waters, whose signatures appear to the foregoing deed, and who

are personally known to me to be the identical person who subscribed and executed the same, and severally acknowledged that they had executed the same freely and voluntarily for the uses and purposes therein expressed.

Given under my hand and seal, this twenty-fifth day of February, A. D., 1848.

CLARK B. STEBBINS,
Justice of the Peace.

State of Illinois, Peoria County, *ss.*

I, Jacob Gale, Clerk of the Circuit Court, and ex-officio Recorder of Peoria County, in the State of Illinois, do hereby certify that the foregoing is a full and correct copy of the record of a deed, and of the certificates of acknowledgement thereof, as the same are recorded in book T, on pages 406 and 407, in my office, as Recorder of said County.

In witness whereof I hereto set my hand and affix the seal of said Court, at Peoria, this 24th day of August, A. [SEAL.] D., 1834.

JACOB GALE,
Clerk and Recorder.

Endorsed.
Filed, August 30th, 1834.
WILLIAM POPE,
Clerk.

And thereupon, a writ of subpœna was issued against the said defendant, Isaac Underhill, directed to the Marshal of the District of Illinois to execute, and was returned by the Marshal on the twenty-sixth day of October, in the year last aforesaid, executed upon the said defendant, which said writ, together with the return of the Marshal thereon, is in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES OF AMERICA, } *ss.*
District of Illinois. }

The United States of America,
To the Marshal of the District of Illinois, *greeting:*

We command you that you summon Isaac Underhill, if he be found in your District, to be and appear before our Judges of our Circuit Court of the United States, for the District of Illinois, at the next rule day thereof, to be holden at *Chicago*, in the District aforesaid, on the first Monday of October next, to answer

unto James P. Harkness and Maria, his wife, to a bill in chancery, filed in said Court, and have you then and there this writ.

Witness, the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this 30th day of August, in the year of [SEAL.] our Lord one thousand eight hundred and fifty-four, and of our Independence the 79th year.

WM. POPE,
Clerk.

(Endorsed.)

The within named defendant is hereby notified, that unless he be and appear, as within commanded, the complainants' bill will be taken against him as confessed, and decree entered accordingly.

WM. POPE,
Clerk.

Served the within subpœna this 11th day of September, 1834, by giving a true copy of the same to the within named Isaac Underhill, and by reading the original subpœna to him.

H. HILTON, H. S. MARSHAL.

(Endorsed.)
Filed October 26th, 1834.
WM. POPE,
Clerk.

And on the twenty-sixth day of October, in the year last aforesaid, came the said complainants by their solicitors, and filed in the office of the Clerk of said Court, their bond for costs in said entitled cause, which said bond for costs is in the words and figures following, to wit:

In the Circuit Court of the United States of America, District of Illinois.

JAMES P. HARKNESS, and MARIA, HIS WIFE,
vs.
ISAAC UNDERHILL.

I, Thomas Bryant, do hereby enter my name security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this Court.

Dated at Peoria, this 12th day of September, A. D., 1834.

THOMAS BRYANT, [SEAL.]

Endorsed.
Filed October 26th, 1834.
WM. POPE,
Clerk.

And afterwards, to wit: on the sixth day of April, in the year A. D, 1855, an alias writ of subpœna was issued against the said defendant, out of the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois, directed to the Marshal of the Northern District of Illinois to execute, and was returned by the Marshal on the fourth day of May, in the year last aforesaid, executed upon the said defendant, which said writ, together with the returns of the Marshal thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } *ss.*
Northern District of Illinois. }

The United States of America to Isaac Underhill:

We command you, as we have heretofore commanded you, that you appear before our Judges of our Circuit Court of the United States of America for the Northern District of Illinois, on the rule day to be holden at Chicago, in the said District, on the first Monday in May next, to answer the bill of complaint filed in the Clerk's Office of said Court in the city of Chicago, then and there to receive and abide by such judgment and decree, as shall then or thereafter be made and pronounced, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois, to execute.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chi-
[SEAL.] cago aforesaid this sixth day of April, in the year of our Lord one thousand eight hundred and fifty-five, and of our Independence the seventy-ninth year.

WM. H. BRADLEY,
Clerk.

Memorandum.

The foregoing defendant is notified, that unless he shall enter his appearance in the Clerk's Office of said Court at Chicago, aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

WM. H. BRADLEY,
Clerk.

I hereby appoint A. M. Braley, a United States Deputy Marshal, for the special purpose of serving the within subpœna, this 18th of April, 1855.

H. HILTON,
U. S. Marshal, Northern District of Illinois.

Served the within subpœna by reading the same to the within named Isaac Underhill, of Peoria, and by delivering him a true copy of this writ, this nineteenth day of April, eighteen hundred and fifty-five.

H. HILTON,
U. S. Marshal, Northern District of Illinois.
per A. M. BRALEY,
S. Depty.

Endorsed.
Filed May 4, 1855.
WM. H. BRADLEY,
Clerk.

And afterwards, to wit: on the first day of May, in the year last aforesaid, came the said defendant by N. H. Purple, Esq., his solicitor, and filed in the Office of the Clerk of said Court, his Demurrer to the complainant's bill of complaint in said entitled cause, which said demurrer is in the words and figures following, to wit:

In the Circuit Court of the United States of America, for the Northern District of Illinois:

JAMES P. HARKNESS AND WIFE,
vs.
ISAAC UNDERHILL.

The demurrer of the defendant, Isaac Underhill, to the complainant's bill of complaint, filed in this cause.

And now comes the said defendant, and says that the said complainant's bill, and the matters and things and allegations therein contained, as the same are therein stated and set forth, are not sufficient for the said complainants to have and maintain their said suit or bill against the said defendant, and that he is not bound further to answer the same, wherefore, for want of sufficiency and equity in said bill, he doth demur to the same, and prays that the said complainant's bill may be dismissed, and that the said defendant may be dismissed with his costs, &c.

A. H. PURPLE,
Def'ts Solicitor.

Endorsed.
Filed May 1st, 1855.
WM. H. BRADLEY,
Clerk.

And afterwards, to wit: on Thursday, the fifth day of July, in the July term of said Court, in the year last aforesaid, the following proceedings were had in said Court in said entitled cause and entered of record, to wit:

JAMES P. HARKNESS, AND MARIA, HIS WIFE, *vs.* ISAAC UNDERHILL. } Bill in Chancery.

By agreement of the parties, by their attorneys, it is ordered by the Court, that the cause be continued until the next term.

And afterwards, to wit: on the nineteenth day of December, in the December term of said Court, in the year last aforesaid, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

JAMES P. HARKNESS and MARIA, HIS WIFE, *vs.* ISAAC UNDERHILL. } Bill in Chancery.

On motion of the complainants, by their solicitors, that the demurrer heretofore filed by the defendant, by his attorney, be stricken from the files herein, and it appearing to the Court that the said demurrer is not supported by affidavit in conformity with the rule, the said motion is sustained. It is thereupon considered by the Court, that said demurrer of the defendant to the complainants' bill of complaint, be stricken from the files herein.

And afterwards, to wit: on Monday, the thirty-first day of December, in the year last aforesaid, in the December term of said Court, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

JAMES P. HARKNESS and MARIA HARKNESS, HIS WIFE, *vs.* ISAAC UNDERHILL. } In Chancery.

On motion of the complainants by their solicitor, leave is granted them by the Court to amend their bill.

And afterwards, to wit: on Saturday, the fifth day of January, in the year A. D., 1856, in the December term, A. D., 1855, of said Court, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

JAMES P. HARKNESS and MARIA HARKNESS, HIS WIFE, *vs.* ISAAC UNDERHILL. } In Chancery.

On motion of the defendant, by his counsel, the complainants are ruled by the Court to amend their bill under the leave granted herein on the 31st ult., by the fifteenth day of January, instant.

And afterwards, to wit: on the eighteenth day of January, in the year last aforesaid, came again the said defendant, by Messrs. Purple and Powell, his Solicitors, and filed in the office of the Clerk of said Court his demurrer to the said complainants' bill of complaint, which said demurrer is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Illinois:

JAMES P. HARKNESS,
MARIA HARKNESS, HIS WIFE,
vs.
ISAAC UNDERHILL.

The demurrer of Isaac Underhill, defendant in the above entitled cause, and bill of complaint of James P. Harkness and Maria, his wife, complainants.

This defendant, by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained, to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the same, and for cause of demurrer showeth that the said complainant hath not, by his said bill, made such a case as entitled him in a Court of equity to any discovery or relief from or against this defendant, touching the matters contained in the said bill, or any of such matters. Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said bill, and to all the matters and things therein contained, and prays the judgment of this honorable Court whether he shall be compelled to make any further or other answer to said bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

PURPLE & POWELL.

UNITED STATES OF AMERICA,
State and Northern District of Illinois. } *ss.*

Isaac Underhill, being duly sworn, says the *the* demurrer in the within entitled cause is not interposed for the purpose of delay.

ISAAC UNDERHILL.

Sworn to before me, this *this* 18th day January, 1856.

WM. H. BRADLEY,
Clerk.

(Endorsed.)
Filed January 18th, 1836.
WM. H. BRADLEY,
Clerk.

And afterwards, to wit: on Tuesday, the twelfth day of February, in the year last aforesaid, in the December term, A. D., 1855, of said Court, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

JAMES P. HARKNESS and
MARIA HARKNESS, HIS WIFE,
vs.
ISAAC UNDERHILL.
} In Chancery.

Now, at this day, came on to be heard the demurrer of the defendant, heretofore filed by his attorney, to the complainants' bill, which demurrer, after argument by counsel, the Court not being now sufficiently advised, takes time to consider.

And afterwards, to wit: on Friday, the sixth day of June, in the year last aforesaid, in the May adjourned term of said Court, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

JAMES P. HARKNESS and
MARIA HARKNESS, HIS WIFE,
vs.
ISAAC UNDERHILL.
} In Chancery.

The Court, having fully considered and being now fully advised upon the demurrer of the defendant heretofore filed by his attorney, to the complainants' bill, overrules the same, with leave to withdraw his demurrer and answer the complainants' bill if he shall so elect.

And afterwards, to wit: on the twenty-third day of July, in the year last aforesaid, came again the said defendant, Isaac Underhill, and filed in the office of the Clerk of said Court his answer to the said complainants' bill of complaint in the above entitled cause, which said answer is in the words and figures following, to wit:

CIRCUIT COURT, UNITED STATES,
Northern District of Illinois.
} July term, A. D., 1856.

JAMES P. HARKNESS and
MARIA HARKNESS,
vs.
ISAAC UNDERHILL.

The answer of the said Isaac Underhill to the bill of complaint, filed in the above entitled cause.

The said Isaac Underhill, saving and reserving all and all manner of exceptions to the many errors, inconsistencies and im-

perfections in said bill, for answer thereto, or to such parts thereof as he is advised by counsel, it is necessary for him to answer unto for answer thereto, says:

That he, this respondent, positively and unequivocally denies that on and before the fifth day of April, A. D., 1832, Isaac Waters, named in said bill, was an actual settler, being a housekeeper upon that portion of the land belonging to the United States, known as the east half of the south-east quarter of section four, in township number eight, north of the base line of range number eight, east of the fourth principal meridian lying and being in the county of Peoria, and State of Illinois, and that the said Waters, from the said fifth day of April, A. D., 1832, and until the thirteenth day of July, A. D., 1833, was in possession of the whole of the said half-quarter section, and until the second day of July, A. D., 1835, was in possession of the west half of the same, and that while he was in possession of the same he improved and cultivated the same, his said improvement and cultivation, beginning in the said month of April, A. D., 1832, as is alleged in said bill.

Respondent further denies that said Isaac Waters was an actual settler and house-keeper, on or before or after the said fifth day of April, A. D., 1832, on the east half of the south-east quarter of section four, township eight, north range eight, east of the fourth principal meredian, or upon any part or portion of the said first above described tract of land, or that he said Waters, at any time, was in possession of the west half of said described land, and cultivated and improved the same, except such possession as will be hereinafter more fully stated.

Respondent, for a further answer to said Bill, admits it to be true as stated in said Bill, "that the said Waters, on the 24th day of September, A. D., 1832, in order to avail himself of the provisions of the Act of Congress entitled, "an Act supplementary to the several laws for the sale of public lands, approved April 5th, 1832, and in conformity with the instructions contained in the circular of the Commissioner of the General Land Office, dated the 8th day of May, 1832, made his affidavit before the proper officer, stating and deposing therein, that he was an actual settler and house-keeper on the tract of land aforesaid, and that he thereby applied to enter the same, which would include his said improvements on said land, which said affidavit was corroborated by the affidavit of one John G. Trail, made on the same day and year as is alleged in said Bill.

But respondent says, the said affidavits of said Waters and Trail, are and were at the time they were made absolutely false and unfounded, and that the said Isaac Waters, at the time he made said affidavit, was not an actual settler and housekeeper on

the said tract of land, nor was said Waters ever in the possession of said tract of land, or any part thereof, except in the manner following to wit: that said Waters, on the night of the 23d day of September, A. D., 1832, remained over night in a log pen without a roof, erected on said land, and on the next day he made the said affidavit, and claimed to be an actual settler and housekeeper on said land, and that remaining over night in said log pen as aforesaid, was the only possession the said Waters ever had of said land, and the same day he made his said affidavit he left said log pen and said tract of land and went to the town of Peoria, where he had resided before and where he still continued to reside until a short time before his death.

Respondent, for a further answer to said Bill says, that he admits it to be true as alleged in said Bill, that on the 27th day of September, A. D., 1832, the said Waters presented to and filed with the Register and Receiver of the Land Office at Quincy, the said affidavits of him the said Waters, and of the said Trail, and then and there applied for the purchase and entry of said land, but could not make the same for the reason stated in said bill, and that subsequently the said tract of land became subject to entry as stated in said bill.

Respondents further admit, that the said Waters, subsequent to his presenting and filing the said affidavits and proofs as alleged in said bill, departed this life intestate, on or about the first day of August, 1835, leaving as his widow and children as his heirs, the persons named in said bill.

Respondent further answering says, that he supposes it to be true as alleged in said bill, that Abigail Waters, the widow of said Isaac Waters, in behalf of herself and the heirs of said Isaac Waters, on the 7th day of August, 1835, and within one year from the day in which the public survey of said township was filed in the Land Office at Quincy, applied under the provisions of the Act by Congress, approved the 2d day of March, 1833, entitled, an Act to revise the Act entitled, "an Act supplementary to the several laws for the sale of public lands, approved April 5th, 1832, upon the proofs and affidavits before them, filed by the said Isaac Waters in the said Land Office to the Register and Receiver for the allowance of a pre-emption right to the said half-quarter section of land under the provisions of the said several acts of Congress before referred to, and that the Register and Receiver deeming the proof sufficient allowed a right of pre-emption to the said Isaac Waters, and allowed the said Abigail Waters to enter said tract of land in the name of said Isaac Waters, deceased, and thereupon Thomas Carlin, Receiver, gave to said Abigail Waters a receipt in the name of said Isaac Waters, as stated in said bill and referred to as Exhibit B.

But respondent again says, that the said Isaac Waters not being an actual settler and housekeeper on said tract of land, on and prior to the fifth day of April, A. D., 1832, was not entitled to a right of pre-emption under the said act, approved April 5th, A. D., 1832, and that his said affidavit, in which he the said Isaac Waters swares he was an actual settler and housekeeper on said tract of land, being wholly false and unfounded, the application made by him for a pre-emption right on said land was fraudulent, and the pre-emption right granted by said Register and Receiver was null and void, the said act of Congress, approved April 5th, 1832, under which said pre-emption was claimed, requiring the pre-emptor to be an actual settler and housekeeper on and before the date of the passage of said act, the affidavit of said Waters only showing that on the day of the date of said affidavit, he was an actual settler and housekeeper on said land, and not that he was on or before the date of the passage of said act, thus fraudulently concealing from the Register and Receiver the facts in the case, and fraudulently procuring from the Register and Receiver a pre-emption right to said land.

Respondent further answering says, that he admits that the certificate or receipt of the said Receiver was recorded in the office of the Recorder of Peoria county, as charged in said bill. But respondent denies that the recording of the said Receiver's receipt operated as a notice to respondent at the time he made the purchase of said land from Aquila Wren as will be hereinafter more fully stated.

For a further answer to said bill, respondent says, that he knows nothing whatever of the execution and delivery of the writing obligatory dated the 13th day of July, A. D., 1833, made by the said Isaac Waters to Stephen Stillman and William A. Stewart, as is alleged in said bill, only as informed by said bill, and by the recording of said writing obligatory, which respondent did not know had been made or recorded until long after he purchased said land from Aquila Wren, as is charged in said bill, and if any such writing obligatory was ever made, executed and delivered, respondent calls for the proof thereof. But respondent positively denies that the facts were as recited in said alleged writing obligatory, that said Waters and Stillman did jointly and by mutual consent, improve and cultivate said half quarter section of land, that said land came under the act of Congress of the 5th of April, A. D., 1832. Respondent denies that said Waters and Stillman did jointly improve and cultivate said tract of land, and even if they had done so, they would not have been entitled to a pre-emption under said act, unless they were actual settlers and housekeepers.

And respondent in this connection further denies that said

Stillman and Stewart entered upon and into the possession of the said tract of land under and by virtue of said alleged writing obligatory, and with the consent of the said Waters.

Respondent has no knowledge, information or belief as to who caused said bond to be recorded, and calls for the proof that said Stillman and Stewart caused said bond to be recorded, or were ever in fact, a party to said contract, particularly the said Stillman.

For a further answer to said bill, respondent says, that as to the assignment and transfer made by said William A. Stewart to Francis Church, and the recording of the same, respondent has no personal knowledge, information or belief, only as informed by said bill, and the fact that respondent finds the same recorded, and if any such assignment was made, he calls for the proof.

For a further answer to said bill, respondent says, that he knows nothing of his own knowledge of the execution of the writing obligatory by said Waters to Moses Pettengill and William Wolcott, as charged in said bill. But respondent had heard by general report at the time, that some kind of a contract existed between said parties, but whether the said writing obligatory referred to and made an exhibit to said bill is the contract, respondent is not advised, and calls for the proof thereof.

For a further answer to said bill, respondent says, that he has no personal knowledge of the assignment of said alleged writing obligatory by said Pettengill and Wolcott to Aaron Russell as charged in said bill, but had heard by common report that said Russell claimed to hold some right to said land under some agreement under said Waters, but what that agreement was, respondent has no knowledge, information or belief, only as informed by said bill.

Respondent admits that said Aaron Russell entered into the possession of a part of the west half of said tract of land, but respondent denies that said Aaron Russell, in the year 1835, erected on said tract of land, or on any part thereof, a large two story brick house, and also a barn, of the value and cost of three thousand dollars, as is alleged in said bill, and made other improvements thereon of the value of five hundred dollars, as is in said bill alleged.

But respondent admits that said Russell, during the Summer and Fall of the year 1836 or 1837, did erect on the said premises a large two-story brick house and a barn, and made some other improvements thereon, but as respondent charges with a full knowledge that the right of said Waters to a pre-emption on said land under the said act of Congress of April 5th, A. D., 1832, was to be contested, and that proceedings had been instituted to set aside the pre-emption granted to said Waters, and for a right of pre-emption in favor of said Stillman, under the act of Congress of the 19th day of June, A. D., 1834.

Respondent admits that said Russell retained possession of the said premises until his death, which, as respondent believes, was some time in the Fall of the year 1838, and respondent believes said Russell had no children or other heirs residing in Illinois at the time of his decease, but left a widow him surviving, and that after the death of said Aaron Russell, his said widow retained the possession of said premises for some time after the death of her said husband, but how long, respondent is not advised, when the said widow also became deceased.

Respondent, further answering, says that he believes it to be true, as alleged in said bill, that after the decease of said Aaron Russell, administration of the goods and chattels of the said Russell was duly granted to Jacob Gale and Enoch Cross, as alleged in said bill. And respondent believes that after the decease of the widow of said Russell, the said administrators entered into the possession of the house erected on said premises by said Russell, and continued in the possession thereof until possession was taken by Aquila Wren; but respondent knew nothing of the taking of the possession of said premises by said Wren until after he had taken possession thereof.

And for a further answer to said bill, respondent says that he knows of no combination or confederation between said Stephen Stillman, Aquila Wren and William Frisby, to cheat and defraud the said Aaron Russell and others interested in and claiming title to the tract of land aforesaid, as charged in said bill, but respondent positively denies all such imputed fraud wherewith the said Stillman, Wren and Frisby are charged in said bill.

But respondent says that the said Isaac Waters, not being an actual settler and house-keeper on the said tract of land on or before the fifth day of April, A. D., 1832, so as to entitle him to a right of pre-emption under and by virtue of the said act of Congress of the 5th of April, 1832, and in pursuance of the instructions of the Commissioner of the General Land Office of the 8th day of May, 1832, and having made a false oath, stating that he (said Waters) was an actual settler and house-keeper on the said described tract of land, so as to bring himself within the provisions of said act, and thus fraudulently having procured the Register and Receiver of the Land Office at Quincy, Illinois, to allow him a pre-emption right to said land, and the said Stephen Stillman, being entitled to a right of pre-emption to said tract of land, under and by virtue of the act of Congress approved the 19th day of June, A. D., 1834, entitled, an act to revise an act entitled, an act to grant pre-emption rights to settlers on the public lands, approved May 29th, 1830, the said Stephen Stillman did, in good faith and without any fraud or covin whatever, on the fifteenth day of June, A. D., 1836, file in the office of the

Register of the Land Office at Quincy aforesaid, his affidavit, that in the year 1833, he cultivated and plowed several acres of the said east half of the said south-east quarter of section number four, with sufficient fence, that in said year he raised corn and onions in said enclosure; also, beans, potatoes, and planted fruit trees; that he had a log cabin built on said land, but being unmarried, he boarded with families adjoining, and that he continued in possession on the 19th day of June, A. D., 1834, and that said Stillman also, at the same time, filed with the said Register, in his office, the affidavits of William R. German and Seth Fulton, corroborative and confirmatory thereof, which affidavits are referred to in his said bill and made an exhibit therein.

And respondent prays leave to exhibit on the hearing of this cause, a duly certified copy of the proofs made by said Stillman of his right to a pre-emption to said land under the said act of Congress of the 19th day of June, A. D., 1834, as above referred to.

But respondent positively denies that said Stillman acquired possession of said tract of land, or of any part thereof under or by virtue of the said pretended writing obligatory bearing date the 13th day of July, A. D., 1833, as charged in said bill. But that said Stillman was in possession of said tract of land, and had fenced several acres of said land, and had planted corn and onions, beans and potatoes, and had planted fruit trees on said land, and erected a cabin thereon before the date of said pretened writing obligatory, and the said Isaac Waters never had any possession of said tract of land, except as hereinbefore stated, and was at no time entitled to a right of pre-emption, either under the said act of the 5th of April, A. D., 1832, or the said act of the 19th day of June, A. D., 1834. And respondent charges that the said Isaac Waters procured the allowance of his right of pre-emption to said land by fraud, and that the allowance of the same was null and void.

For a further answer to said bill, respondent says, that it is true as alleged in said bill, that on the ninth day of June, A. D., 1836, the said Stephen Stillman did make, execute and deliver to the said Aquila Wren, his deed for the land described therein, and at the time and in the manner as stated in said bill, and respondent believes the copy filed as an exhibit (H) with said bill, is a correct copy of said deed.

For a further answer to said bill, respondent says, that he believes it to be true, as alleged in said bill, that on the application of said Stillman to the Register and Receiver of the Land Office as aforesaid for a right of pre-emption to said land under the said act of Congress, approved June 19th, 1834, and on his proofs of his right to such pre-emption filed in the office of the Register as

dated on the eighth day of June last mentioned, stating therein aforesaid, that the Register and Receiver of said Land Office declined and refused to allow the same, because they had previously allowed and adjudged to the said Waters a pre-emption therefor, but referred the same to the Commissioner of the General Land Office for his adjudication and decision, and that the said Commissioner, by his letter dated May 2d, 1838, directed the said Register and Receiver, if satisfied of the truth of the said affidavits and proofs of the said Stillman, to permit him to enter the said tract of land under his said application, as is alleged and stated in said bill, and which letter of said Commissioner is made an exhibit to said bill, marked (I), and which respondent prays leave to exhibit on the hearing of this cause.

Respondent further answering says, that he believes it to be true, as stated in said bill, that said Stephen Stillman departed this life in the month of March, A. D., 1837.

Respondent further answering says, that it is true, as stated in said bill, that on the 23d day of February, A. D., 1841, that the said Aquila Wren and his wife, by their deed bearing date the said 23d day of February, A. D., 1841, bargained, sold and conveyed the west half of said half quarter section to Isaac Underhill, except about seven acres, which is not conveyed by said deed, and is reserved therein as by said deed will more fully appear, which deed respondent prays leave to exhibit on the hearing of this cause, and which will also appear by the exhibit of said deed filed with said bill marked (R).

Respondent in this connection further says, that at the time he made said purchase and received said deed from said Wren and wife, he paid a good and valuable consideration for the land therein described, and that he purchased the same *bona fide*, and verily believed, and still believes that he was acquiring a good title to the premises conveyed, and was fully aware that the said Isaac Waters never was entitled to a right of pre-emption to said land under the said act of Congress of April 5th, 1832, and that his said right of pre-emption obtained, and the certificate of purchase given to him by the Register of the Land Office had been set aside by the Commissioner of the General Land Office, and that a patent had been duly issued by the United States to said Stephen Stillman and the said Wren, then being in the quiet and peaceable possession of said land.

Respondent admits that at the time he made said purchase of said Wren, and received said deed, that the said bond or writing obligatory, of the 13th day of July, 1833, and the certificate of purchase of said land, or rather Receiver's receipt, were recorded in the Recorder's office of Peoria County, Illinois, where said land is situate. But respondent says that at the time he made

said purchase he had no actual notice of the existence of said bond as before stated, and respondent contends that he is an innocent purchaser, without any notice whatever of an adverse claim to said land by any person whomsoever.

Respondent, further answering, says that it is true, as alleged in said bill, that he has been in the possession of said premises, under his said title, ever since the making of said deed from Wren and wife to him; and respondent claims that as he purchased said land in good faith, and for a valuable consideration, and has been in the possession of said land from the date of said deed from Wren and wife to him, to the time of the commencement of this suit, and has made large and valuable improvements on said described premises, and the said complainants have for years stood by and saw respondent making those improvements thereon without setting up any claim to said land, and the said defendant insists that the said complainants are bound by the statutes of limitations of the State of Illinois, from prosecuting their said suit, and they do hereby set up and insist upon the same as a defence to said bill.

Respondent admits that he has received some rents and profits from said land, the amount of which he cannot state, but denies that they have amounted to anything like the sum of twenty thousand dollars, as charged in said bill, and states that they arose principally from improvements made by him on said land, and that up to the time the land was laid out into town lots, in 1852, the rents and profits were not more than sufficient to pay the taxes on the same.

Respondent, further answering, says that he believes it to be true, as alleged in said bill, that on or about the 16th day of July, 1838, that application was made at the Land Office in Quincy for the purchase of said land under the affidavits and proofs filed in said office by said Stillman. But who acted as such agent, or at whose instance he acted, respondent does not know, but believes that it was done under the authority and direction from said Stillman given previous to his decease, and respondent denies that the application made to enter said land was made without authority.

Respondent, further answering, says that it is true, as alleged in said bill, that the Receiver of said Land Office, acting under the directions of the Commissioner of the General Land Office, did allow and permit the said tract of land to be entered and purchased on the said application, and thereupon issued a certificate of purchase to said Stephen Stillman, and delivered to the person who made the application a duplicate receipt for the money paid on such purchase, as charged in said bill, and as fully shown by the said certificate marked as Exhibit (K) in said bill,

but respondent denies that all this was done without authority from said Stillman.

Respondent, further answering, says that he has no knowledge as to who furnished the funds to pay for said purchase; whether by said Wren and Frisby, or by said Stillman or his heirs, only as informed by the certificate given by the Register, which says that "the said Stephen Stillman has made payment in full required by law," but respondent denies that said purchase was made without authority of said Stillman or his heirs at law.

Respondent, further answering, says that he knows nothing whatever of the employment of an agent by said Wren and Frisby to procure the patent to be issued for said land. All respondent knows in relation to said charge in said bill is, that a patent was duly issued, bearing date the 5th day of December, 1838, as alleged in said bill, and that said patent was delivered over to respondent by said Wren when respondent received his deed from said Wren and wife, as hereinbefore stated.

Respondent, further answering, says that he knows nothing whatever, of his own knowledge, of the said Wren's ousting and deforcing the said Gale and Cross from the possession of said land, as charged in said bill, as respondent was not in Peoria where said land is situate, at the time it is alleged to have been done, but respondent says that said Wren was in the peaceable possession of said land at the time he made the conveyance to respondent.

For a further answer to said bill, respondent says, that he has no personal knowledge of the several matters alleged in said bill as to the suit commenced by said Gale and Cross as administrators of said Russell on the bond given by said Waters to said Pettengill and Wolcott, and the subsequent proceedings thereon, but supposes it to be true, as alleged in said bill, that such suit was commenced and prosecuted to judgment, that execution was issued and a sale made, and a deed executed as stated in said bill.

But respondent denies that said complainant by such proceeding acquired any title whatever to said premises, because the legal title to said land at the time of the rendition of said judgment, and at the time of the sale thereof, was in the said Wren, and not in the heirs of said Isaac Waters, against whom the said proceedings were had, and that the said heirs had no title which could be sold on execution.

For a further answer to said bill, respondent says, that he knows nothing whatever of the alleged deed made by Henry Waters and others, heirs of said Isaac Waters, deceased, to the complainant, Maria Harkness, as stated in said bill, only as informed by said bill, and if any such deed was made, respondent calls for the proof.

And this respondent further says, that he is advised by counsel and believes the same to be true, that the said complainants have no legal title whatever to said land in said bill described, and no legal or equitable right to a decree in their favor in this cause, and having fully answered, he prays to be dismissed with his costs. ISAAC UNDERHILL.

UNITED STATES OF AMERICA,
Northern District of Illinois. } *ss.*

This day personally appeared before me, the undersigned Clerk of the Circuit Court of the United States for the Northern District of Illinois, Isaac Underhill, who being duly sworn, deposes and says, that the foregoing answer by him subscribed, and all the several matters and things therein stated and set forth as of his own knowledge, are true in substance, and in matter and fact, and that all the other matters and things therein stated as being derived from the information of others, he verily believes to be true, and further saith not. ISAAC UNDERHILL.

Subscribed and sworn to before me this 23d day of July, A. D., 1856. WM. H. BRADLEY,
Clerk.

Endorsed.
Filed July 23, 1856.
WM. H. BRADLEY,
Clerk.

And afterwards, to wit: on the eighth day of August, in the year last aforesaid, came again the said complainant by Messrs. A. and J. H. Williams, their Solicitors, and filed in the office of the Clerk of said Court their replication to the said defendant answer in said entitled cause, which said replication is in the words and figures following, to wit:

JAMES P. HARKNESS AND
MARIA HARKNESS HIS WIFE,
vs.
ISAAC UNDERHILL.

The replication of James P. Harkness and Maria Harkness his wife, complainants to the answer of Isaac Underhill, defendant.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer for replication thereunto, say that they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants without this, that any other mat-

ter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied is true, all which matters and things these repliants are and will be ready to aver and prove as this honorable Court shall direct, and humbly pray, as in and by their said bill they have already prayed.

A. & J. H. WILLIAMS,
Solicitors for Complainants.

Endorsed.
Filed August 8th, 1836.
WM. H. BRADLEY,
Clerk.

CIRCUIT COURT OF THE UNITED STATES,
For the Northern District of Illinois.

JAMES P. HARKNESS,
MARIA HARKNESS,
Plaintiffs.
vs.
In Chancery.
ISAAC UNDERHILL.
Defendant.

Be it remembered, that on the 24th day of December, A. D., 1856, at Peoria, in the county of Peoria, and State of Illinois, Purple & Pratt, for the deft. and Grov & McCoy, for the plaintiffs, personally appeared before me, a United States Commissioner in and for said county and State, and mutually agreed that in a suit then pending in the Circuit Court of the United States for the Northern Circuit and District of Illinois, wherein James P. Harkness and Maria Harkness, are plaintiffs, and Isaac Underhill, defendant. That the testimony of the witnesses hereinafter named was material and necessary for the said parties in the trial of such suit, and that they, the said witnesses, lived more than one hundred miles from Chicago, where the Court at which the said parties expected the said cause would be tried, was appointed by law to hold, and the said attorneys of said parties requested me that the said witnesses hereinafter named might be examined according to the directions of the Act of Congress in such case made and provided. Whereupon, I ordered that the said witnesses should be examined *de bene esse* before me at my office in the city and county of Peoria, and State of Illinois, and the said parties, by their said attorneys, appearing before me at my office in the city and county of Peoria, in the State of Illinois, on the days of the date of the respective depositions. I have, therefore, proceeded with the examination, and the said witnesses, and each of them being first carefully examined, and cautioned and duly sworn by me to testify the truth, the whole truth, and nothing but the truth, did each of them, namely, James H. Eads, John W.

Caldwell, Moses Pettengill, Charles Ballance, John C. Flanagan, Asahel Hale, Jacob Gale, John Hamlin, Thomas G. Eads, William Eads, Ralph Hamlin, Augustus O. Garrett, Mark M. Aikers, Seth Fulton, Johnson S. Adams and Charles Kettelle, testify as is in their respective depositions hereinafter set forth as follows:

Deposition of James H. Eads.

Examined by Plaintiffs' Counsel.

My name is James H. Eads. My age is forty years, and I reside in Peoria county. I am acquainted with the east half of the south-east quarter of section four, in township eight, north of range eight, east of the fourth principal meridian in the county of Peoria and State of Illinois. I have been acquainted with the tract more than thirty years. I first came to the town of Peoria about the year 1821 or 1822, and lived there about 20 years. I knew Isaac Waters, Stephen Stillman, and William Riley Germen. I remember that Isaac Waters went on to the land above described right away after the first pre-emption law came out in 1832. He first put up a rail pen on the land, and then he moved a hewed log-house on to it a few days after the pen was put up. This was in the Spring of 1832, before he planted the corn. As soon as the house was up and covered, and before there was any floor on it, he moved into it with his family; he kept possession of the property about two years. I helped him plant corn on it two years. The first year he broke, fenced, and put in corn from three to five acres; the next year he had between fifteen and twenty acres fenced and broke. Waters' family consisted of a wife and four children who lived with him when he went on to the land. When Waters went on to the land, it was vacant and unoccupied. To the best of my knowledge no other person than Waters was in possession of the land during the year 1832 and 1833. Waters went on to the land for a pre-emption right. Stephen Stillman had no family during the years 1832 and 1833, nor at any time to my knowledge. I knew Aaron Russell.

Examined by Defendant's Counsel.

Waters went on to the land shortly after the pre emption law of 1832 came out. I never saw the pre-emption law under which Waters claimed his pre-emption at the time the pre-emption law came out. I was near fifteen years old. I cannot read or write. Waters went on to the land within a month or two after the pre-emption law came out. He had never been on the land before.

Re-examined by Plaintiffs' Counsel.

In 1832 and 1833, I lived not more than quarter of a mile from the land in controversy.

his
JAMES H. ⋈ EADE.
mark.

December 24th, 1856.

John W. Caldwell, examined by Plaintiffs' Counsel.

My name is John W. Caldwell. I am forty-seven years old, and reside in Tazwell county, Illinois. I know where the east half of the south-east quarter of section four, township eight, north range eight, east in Peoria county is situated. I came to the town of Peoria in 1830, and lived there for thirteen years thereafter. I lived from a quarter to half a mile from the land in question. I knew Isaac Waters. To the best of my knowledge Isaac Waters got possession of the land from John R. Nicholson, in February, 1832. Some time in the latter part of March of that year, Waters hauled some rails on to the land, and some time in April he hauled on some house logs. I left Peoria the latter part of April or first of May of that year, and was gone from three to five weeks in the Blackhawk war, and when I returned, there was the body of a house on the land unfinished, and some ground was broken and planted with corn and pumpkins; several acres were broken; I don't know how much. Waters cultivated all that was cultivated that year of 1832. I think no crop was raised on the land in 1833. In 1832 Waters put a sod fence in part, and in part a rail fence round a portion of the land. I don't know how many acres. I am rather of the opinion, but am not positive, that Waters had more land broken in 1833; I can't tell. When Waters moved on to the land it was in 1832, and he had his wife there. He moved on in the summer or spring; it was in that summer or season; I can't give the date. In the summer of 1831 Stephen Stillman had a rail pen built on the land on his claim; there were fifteen or twenty rails; Henry Stillman built the pen as a claim for Stephen Stillman, and Stephen Stillman came on afterwards and claimed it for himself; that was all the improvement on the land in the spring of 1832, before Waters took possession. Mr. Stillman parted with the claim before Waters got it. Stillman, in the spring of 1833, put up a little cabin on the land; this may have been in 1834; I am not certain which. I think, but am not positive, that Stillman claimed the east half of the land. [When Stillman built the cabin in 1833 or 1834, he claimed under Waters, and expected to get a deed from Waters.] [He told me that he had a bond for a deed from Waters for forty acres

In brackets. Objected to by deft's counsel.

of the land. I am not certain which half Stillman was to have of Waters. Stillman said he was to pay Waters fifty dollars for the half.]

I was intimately acquainted with Stephen Stillman and Wm. B. German; they were both very intemperate men; Stillman was a single man. Stillman, I think, was not capable of doing any business for two or three years before his death; he was incapable of doing any business correctly. Stillman told me after he had put up the cabin on the land, that he had sold a part or the whole of his claim to Wm. A. Stewart; whichever part of the land Stillman took possession of, he took under the arrangement with Waters, for to put his house on. Aaron Russell took possession of the west half in 1836 or 1837; Russell died in 1838. As soon as Russell finished his house on the land, he went into it and lived there till he died. Russell left a widow, who remained in possession till she died in 1839.

Examined by Defendant's Counsel.

I went to the Blackhawk war about the latter part of April or first of May, 1832. At that time there was no settler or housekeeper on the land in controversy. Isaac Waters, in February, 1832, lived at the ferry, on another piece of land. Soon after, he moved into the original town quarter of the town of Peoria—not the land in question—and was living there when I went to the Blackhawk war, I think, on the fifth of April, 1832. No person was living on the land in controversy after the first of May, 1832. I went to a house built on the claim. Waters and his wife were there in the morning. I don't know how long they staid, but it is my impression they did not stay another night. The house they were in was the same house spoken of in my direct examination. The roof was made of boards laid one end on the top logs, and put in two or three logs lower at the other end, to form a slope, but the house was not chinked or daubed. Waters was not living on the land at any time after I came back from the Blackhawk war, except the time above spoken of.

Re-examined by Plaintiffs' Counsel.

When I went to the house as above spoken of, Waters and his wife were there, and invited me in, and, of course, they were then living in the house.

J. W. CALDWELL.

December 24, 1856.

Moses Pettengill, examined by Plaintiff's Counsel.

My name is Moses Pettengill. My age is fifty-three years, and I reside in the city of Peoria. I first came to reside in Peoria June 1st, 1834, but I was in Peoria in the last of December,

1833. I knew Isaac Waters. I am acquainted with the west half of the east half and the whole east half of the south-east quarter of section four, township eight north, range eight east, in Peoria county. I was acquainted with William Wolcott during the Summer of 1834. Isaac Waters was in possession of the west half of the east half of the above land, and had improvements on it, twenty acres or more being enclosed, and a crop on part or all of it. The beginning of a house or log building, not roofed, was then on the land. On the 2d of July, 1835, I and William Wolcott purchased the west half of the east half of said land from Isaac Waters. Before purchasing, I made inquiries as to who was in possession of and the owner of the land, and I learned from John Hamlin and A. O. Garrett that Waters had a good pre-emption claim under the laws of Congress. Waters executed to Wolcott and myself a bond, the original of which, signed by Isaac Waters and marked "A," is hereto attached and made part of this deposition. I sold my interest in said bond to Aaron Russell, and the assignment of my interest to Russell is written on the back of said bond, and referred to as part of my deposition. I have seen the handwriting of William Wolcott, and should think the signature on the back of said bond to an assignment dated 3d November, 1835, is the handwriting of William Wolcott. There was a crop on the land bought by Wolcott and myself in 1835. Russell took possession of the land when Wolcott and I sold to him, and commenced building on it in 1836, and finished in 1837. He put up a large two-story brick house and a large stable, and enclosed a large part of the land in 1836 and 1837. These improvements made by Russell, I should think cost seven thousand dollars or more. Russell had a wife, and in the Fall of 1837 moved into the brick house, and resided there till the Fall of 1838, when he died. He left a widow but no children. The widow occupied the premises till her death in 1839.

Examined by Defendant's Counsel.

I came to give my deposition at the instance of Jacob Dant and Henry Grove, his attorney. I suppose Mr. Dant appears here as a party having an interest in the land in controversy at the time. I came here in June, 1834. There was no person actually residing or living on the land in controversy.

MOSES PETTENGILL.

December 24, 1856.

Charles Ballance, examined by Defendants.

My name is Charles Ballance. I reside in the city of Peoria, and have lived there twenty-five years. I am an attorney at law and a surveyor, and have been the County Surveyor of Peoria

County. I am acquainted with the east half of the south-east quarter of section four, township eight north, range eight east, in Peoria county. I knew the land on the fifth of April, 1832; at that time there was no settler or housekeeper on the above land; when I came to Illinois, in 1831, Isaac Waters was living on the south-east of nine, 8 N., 8 E., at the ferry; some time in the next year he moved into a house on the north-east quarter section 9 8 N., 8 E., and lived there three or four years; he removed from there to a farm about 20 miles from Peoria, and there lived till he died; some time in the summer of 1832, I saw him and his wife residing in a house on the east half of the south-east of 4, 8 N., 8 E.; they had bedding and kitchen furniture there, but I never saw them there but the one time; the house they were in was made of hewed logs, about ten feet or twelve feet by sixteen feet; no permanent roof was on it, but boards were extended from the top logs of one side to the crack of lower logs on the other side; it was not daubed or chinked; I saw no children at the house, though he had children, but only Waters, his wife, and a Justice of the Peace, who was either Andrew M. Hunt or Stephen Stillman; I rather think Hunt. I was requested to go there to make an affidavit to be used by Waters for the purpose of establishing a pre-emption claim; at that time there were about fifty people living at Peoria. If Waters had lived there any length of time I should have known it; in fact, he was soon after living in the lower part of Peoria. The house in which I saw Waters and his wife as above, had no floor.

Examined by Plaintiffs' Counsel.

I became acquainted with Isaac Waters in November, 1831; he was then a housekeeper, and continued to be till he died, in August, 1835; I was at his house frequently, and saw his wife and children some time before; I saw Waters in the house on the land as above said. I saw improvements on the land—corn and melons planted, and a poor sod fence (on) one side, and a sort of rail fence on the other side. This was not as soon as the 5th of April, 1832. There may have been *have been* two or three acres enclosed. I knew there was an agreement in writing between Waters and Stillman respecting the land, but I don't remember its date or contents. I have frequently seen Waters and Stillman write.

C. BALLANCE.

December 24th, 1836.

John C. Flanagan, examined by Plaintiffs' Counsel.

My name is John C. Flanagan; my age forty-three years, and I reside in the city of Peoria, where I have resided since May, 1824. I was acquainted with Isaac Waters and William A. Stewart. [I have seen a bond, executed by Isaac Waters to Stillman, by Stillman assigned to Stewart, by Stewart to Francis Church, and by Church to myself, for twenty acres, part of the east half of the south-east quarter of the land in question. I have not seen that bond for 12 or 15 years; I last had it among my papers, and have looked for it but could not find it; I do not know where the bond is now; I have no recollection of having delivered that bond to any one; my search for the bond among my papers was a thorough search; I believe it to be lost or mislaid; the bond, I think, I had put on record with the assignments, if there were any on it; I cannot recollect whether there was an assignment on that bond from Church to Underhill as well as myself, or whether Church gave two bonds, one to me and one to Underhill, for twenty acres each. I don't recollect any assignment on the bond from Underhill to me; if there be such an assignment, I suppose it to be genuine, but I don't recollect any such assignment.] I have seen no other bond from Waters to Stillman or to Stillman and Stewart for any of that land. I am in possession of twenty acres of the land in controversy, under the lost bond or some of its assignments. The lost bond contained a condition that whenever the land came into market, that Stillman should pay fifty dollars to Isaac Waters, [and I paid, as assignee of the bond, fifty dollars to the administrator of Isaac Waters.] By the lost bond Waters bound himself to convey twenty acres—the west half of the east half *of the east half* of the south-east quarter of the land in question. The lost bond did not provide that any portion of the land was to be retained by Waters. I always understood, either from the bond or other sources, that Stillman was to have the east forty acres of the land in controversy; if forty acres were included in the lost bond, Underhill might have seen it, but I do not know that he did. I think it altogether likely that I showed the lost bond to Aquila Wren or William Frisby, but by my recollection is indistinct.

"In brackets." "Objected to by Defendt.'s Counsel."

"In brackets." "Objected to by Defendt.'s Counsel."

Examined by Defendant's Counsel.

I have no knowledge that Underhill ever saw the bond between Waters and Stillman, relating to the land in controversy.

JOHN C. FLANAGAN.

Dec. 24th, 1856.

The taking of the depositions adjourned by agreement to Friday, the 26th December, 1856.

Asahel Hale, examined by Plaintiffs' Counsel.

My name is Asahel Hale. I am sixty-five years old, and reside in the city of Peoria, where I have resided ever since the first day of May, 1831. I first knew Isaac Waters in the summer of 1831. He was then a house-keeper, and continued to be till his death. I believe I am acquainted with the east half of the south-east qr. sec. four, township eight, north range eight east in Peoria county. I first knew the land in May, 1831. In May, 1831, there were two rail pens on the east half. In the spring of 1832, Isaac Waters moved an old cabin on to the east half, and laid up the body or square of it. Some time in April he broke some ground on the land. I am not certain what precise time the breaking was done. I will not say that the log-house was put on the land before the 1st of April, 1832, but I should think it was. In the Spring of 1832, he broke and enclosed enough to make a garden on the land; during the summer of 1832, considerable ground was broke but not enclosed. In spring of 1833, a cabin was put up on the easterly side of the land by Stephen Stillman, as I understood. In the summer or fall of 1832, Waters broke five or ten acres on the land extending from east to west across the tract of land. In the winter or spring of 1833, rails were hauled on to the land by me at the request of Waters, and Waters sowed wheat on the west half of land in the spring or summer of 1833. Waters kept in possession of the west half of the land till he sold it to Pettengill and others. [It was generally understood in the neighborhood that Waters had possession of the land under a pre-emption claim. In the spring of 1833, at the time the cabin was put up on the easterly half of the land. I understood Stillman to claim one-half and Waters the other half of the land.]

In brackets, objected to by Deft's counsel.

In the spring of 1832, some eight or ten families lived in what is now the city of Peoria. I lived within three-quarters of a mile of the land in controversy, and could see it whenever I went out doors. Aquila Wren lived in the spring of 1831 about half a mile from the land, and in the spring of 1832, he moved to a distance of a mile and a half from the land.

Examination by Defendant's Counsel.

On the tenth day of April, 1832, Isaac Waters lived in Peoria, about a quarter of a mile or more from the land in controversy, and he remained at the same place till he removed to a distance

of some twenty miles from Peoria. I never saw Waters with his family living on the land in controversy. I have seen him there often.

Re-examined by Plaintiffs' Counsel.

In brackets, objected to by Deft's counsel.

[In the spring of 1833, Waters requested me to haul on the east-half of the land some rails belonging, as he said, to Stillman, and that Stillman would pay me, and that Stillman was to have the east half of the land, and he, Waters, the west half. I objected to taking Stillman for pay, and Waters then said he would pay for the hauling if Stillman did not,] Stillman claimed to own the east half, but not the west half. In the summer of 1833, there were onions growing on the east half, and on the west half Waters had corn and wheat and vegetables.

ASAHEL HALE.

Dec. 26, 1856.

Jacob Gale, examined by Plaintiffs' counsel.

My name is Jacob Gale. My age forty-one years, and I reside in the city of Peoria, where I have resided about twenty-two years last past. I was Clerk of the Circuit Court of Peoria county from the Fall of 1814 to the Spring of 1856. I was Recorder of said county from December, 1849, to the Spring of 1856. [I have seen on the Judge's Docket of the Circuit Court of Peoria County for the April term, 1856, an entry of which the first seven upper lines, enclosed in black marks, and extending from left to right on the paper hereto attached and marked "B," are a true copy. I think I have seen the original bill in the case entitled, Stephen Stillman and William A. Stewart *vs.* the administrators and heirs of Isaac Waters, deceased, and I read the bill. I do not, however, recollect that Stewart was one of the complainants in said bill, but suppose he was, from seeing the entry on the docket. The bill sought to compel a conveyance from the administrators and heirs of Isaac Waters, deceased, to Stephen Stillman, of the east forty acres of the south-east quarter of section four, township eight north, range eight east, in Peoria county. I saw the bill on the files of the Circuit Court before I was Clerk of the Court, but I have never seen it since, and don't know where it is. I have repeatedly searched in the Clerk's Office, where I supposed the bill ought to be, and among the old papers of the office. My impression is, that the bill was in the handwriting of William Frisby, or signed by him as counsel.] I was acquainted with Frisby's handwriting, and he is dead

In brackets, objected to by Deft's counsel.

some years ago. I think Frisby was on one or more occasions the counsel of Aquila Wren, and also of Isaac Underhill. I first knew the land in controversy in this suit in the year 1834. A portion of it was enclosed, and in cultivation in part—about thirty acres enclosed—and I understood Isaac Waters to be in possession of it. I have seen an instrument purporting to be a bond from Isaac Waters to Moses Pettengill and William Wolcott, and assigned by Pettengill and Wolcott to Aaron Russell. I do not remember when I first saw the instrument, but have seen it in the possession of Aaron Russell in his lifetime, I presume as early as 1857. Waters was Clerk of the Circuit Court of Peoria county in 1834.

[And I have seen what purports to be his hand-writing on the record and on processes, but do not recollect ever to have seen him write, and the body and signature of the bond above referred to is in a similar handwriting.] I know the handwriting of Moses Pettengill; have seen him write often, and the signature to the first assignment of said bond is Pettingill's handwriting. The bond referred to is the one upon which Enoch Cross and myself, as administrators of Aaron Russell brought suit against the heirs of Isaac Waters, deceased, in the Circuit Court of Peoria county in 1842 or 1843. We only brought one suit on the bond, and prosecuted it to judgment. The bond of which I speak is attached to these depositions and marked "A." Aaron Russell was in possession of the west half of the land in controversy in 1836, and commenced building in 1837 on the land, or about that time. He re-built the fence or a portion of it around the west half of the land probably thirty acres were enclosed. He built a two-story brick house on it about forty by thirty feet, and a barn, both probably of the cost of five or six thousand dollars. Russell remained in possession till he died in the Fall of 1838. His widow retained possession till her death in the Fall of 1839. Enoch Cross and myself, as administrators of Aaron Russell, retained possession till the Spring of 1841. John Spaulding had occupied the premises as tenant of Cross and myself. He moved out and gave us the possession, and locked up the house, giving us the key. He gave us possession the afternoon, and the next morning I found Jacob and Anson Daust in the place, who resisted my attempt to enter the house, and said they had been placed there by Aquila Wren. I went to get help to put them out, and came back with other persons, and I found Aquila Wren also in the house. I could not obtain possession, however. Wren said he would shoot me if I came into the house. This possession was taken by Wren in 1841, in mild weather in the Spring, but I

In brackets, objected to by Deft's counsel.

cannot tell the precise time. The annual value of the property when taken possession of by Wren, and from that time to this, would be on the average one thousand dollars, if laid out into town lots and leased on long lease for residences. The same property, if leased for farming purposes, with the house and improvements, would be worth six or seven dollars per year an acre. I have lived for twenty-two years within half a mile of the land in controversy, and for most of that time within five rods. The south-easterly corner of the *the* land in question is within a quarter of a mile of the Illinois river, and the south-west corner of the land is about a thousand feet from Main street, in the city of Peoria. [I should suppose that it was the general understanding in Peoria in 1834, when I came, that *that* Waters claimed the west half of the land under a pre-emption right.] His possession of the land was open and notorious.

In brackets, objected to by Deft's counsel.

Examined by Defendant's counsel.

I understood that the Jacob Darst mentioned in my direct examination claims an interest in the land in question, and is aiding in the prosecution of this suit.

JACOB GALE.

December 26, 1856.

John Hamlin, examined by Plaintiffs' Counsel.

My name is John Hamlin; my age is fifty years; my residence is the city of Peoria, where I have resided ever since the spring of 1822. I have been acquainted with land in controversy for thirty years, and have lived within half-a-mile of it most of the time. I remember Isaac Waters hauled logs on to the land, and afterwards I saw them put up to the square and roofed in with boards; all this I think was in the spring of the year, but I don't remember what year. The log-house was built on or near the south line of the land and near the south-west corner. Improvements were made on the land the same season the log-house was put up as I understood by Isaac Waters. I don't know, but I suppose Waters had possession of the land till Russell took possession. Russell took possession of the land and commenced building in fall of 1836, and finished his house in 1837, and remained in possession till 1838, when he died; his widow retained possession till her death in 1839, and then Mr. Spaulding remained in the house till 1841. My impression is, that Wren took possession late in the spring of 1831. The average annual value of the land and improvements as taken possession of by Wren, would, I think, be about three thousand dollars.

Examined by Defendant's Counsel.

Isaac Waters, for three or four years before he moved his family away from Peoria, lived on Water street in Peoria, most of the time. He moved his family away in the spring of 1834 or 1835. It was reported that he lived on the land in controversy about as long as was customary in those days to obtain a pre-emption right. This was the same year that the log-cabin was put up.

JOHN HAMLIN.

Dec. 26, 1856.

Thomas G. Eads, examined by Plaintiffs' Counsel.

My name is Thomas G. Eads. I am forty years old, and reside in Peoria county. I resided in what is now the city of Peoria from February 1822, for several years; then moved away; then returned before 1832, and resided in Peoria for four or five years. I am acquainted with the land in controversy in this suit. Isaac Waters first settled and improved that land. Waters first took possession of the land on the third or fourth day of April, 1832. The possession was hauling logs on to the land, building a log-house, and he had some of the land fenced and broke. I helped plant the land. He moved into the log-house with his family either on the third or fourth day of April, 1832. The next year he cultivated but ten or fifteen acres. I think he kept possession of the land three years. I know he kept possession two years, for I helped him plant it.

Examined by Defendant's Counsel.

The reason I remember the third or fourth of April was, that he might be on the land soon enough to hold his pre-emption. He hauled the logs for the house in the last of March, 1832. The house was put up right away after the logs were hauled. He lived in the house several days; he moved in with his women and small children. I don't know that all his family were there —I saw them there.

THOMAS G. EADS.

Dec. 29th, 1856.

William Eads, examined by Plaintiffs' Counsel.

My name is William Eads; my age is seventy-five years, and I reside in Peoria county. I know the land in controversy in this suit. Isaac Waters was the first settler on that land, and did the first work on it that I ever heard or saw; he commenced his improvement of the land about the time stated by my son

Thomas G. Eads in his deposition, and moved with his family into it the second or third or fourth of April, 1832; he moved a large double log-house on to the land some time in March, or the very first of April, and raised the house in part so as to cover it and keep the weather off. Then he moved his family into the house. That season he broke, fenced, and planted in corn, potatoes, &c., about two acres of the land. The planting was done, I think, before he moved in with his family. The work was all pushed work, in a hurry. To the best of my knowledge, he continued in possession three years, certainly two years. His possession was open and generally known.

Examined by Defendant's Counsel.

After he moved into the house, he remained in it with his family for two or three days and nights; my house in Peoria adjoined that of Waters, and that is the reason I knew about his being in the log house on the land. Immediately before he moved on to the land, he lived in Peoria on the lot adjoining me, and when he left the log house on the land, moved back to his old house. I don't think he took all his household goods to the log house; he took up beds and provisions, and when he did that he invited some of his neighbors to take supper with him, and some of them went. I don't know whether he took all his goods back to his old house, but he did not continue to keep house on the land, but lived and ate, and slept in his old house in Peoria. Clark Waters and his family moved into the log house on the land when his father left it in the spring, and remained on it and *and* worked the land that summer. I understood he went in under his father, and I am sure, from every circumstance, he did.

Re-examined by Plaintiffs' Counsel.

The log house put up by Waters on the land was in plain view from Waters' old house, and my house on Water street in Peoria.

his
WILLIAM ⋈ EADS.
mark.

December 29, 1856.

Thomas G. Eads, re-called by Plaintiffs' Counsel.

Clark Waters, the son of Isaac Waters, went into the log house on the land after his father left it in the spring, and remained there till the fall of the year, when he moved to Harkness Grove. Clark Waters and Charles and Eber Waters, his brother(s), worked the land that summer. Clark, I think, lived on the land and the other boys at home with their father. Clark Waters was a married man at that time.

THOMAS G. EADS.

December 29, 1856.

Ralph Hamlin, examined by Plaintiffs' Counsel.

My name is Ralph Hamlin; my age is thirty-nine years, and I reside in the city of Peoria. I came to Peoria about the first of June, 1833, and have resided in Peoria ever since. I am acquainted with the land in controversy in this suit. I was acquainted with Isaac Waters, Stephen Stillman, William A. Stewart and Francis Church, and I am acquainted with Isaac Underhill and John C. Flanagan. I first knew Waters, Stillman and Stewart in the summer of 1833, and I first knew Underhill in 1834, possibly before, and when he first came to Peoria. I first knew Church and Flanagan in 1834. William A. Stewart was acting Recorder of Peoria county in 1833 and 1834, and part of 1835, and perhaps before. I have seen a bond from Isaac Waters to Stephen Stillman and William A. Stewart. I was present at the execution of it, and signed it as a witness at the request of Waters. The bond was dated the 13th July, 1833, but I don't know who it was delivered to; my impression is, that Stewart was present at the execution of the bond, but I am not certain. The bond was filed for record on the second of August, 1834, as appears from the entry book of the Recorder's Office. I recorded the bond, and was recording in the office at the time with the knowledge and consent of Stewart, the Recorder. The paper marked "C," and hereto attached as part of my deposition, is a true copy of the original bond from the record; of the existence of the original bond, or where it is, I know nothing. I have seen the original assignment of that bond from Stewart to Francis Church, and was a subscribing witness to that assignment. The assignment is dated August 20, 1854. William A. Stewart recorded that assignment in his own hand writing. The paper marked "D," hereto attached and made a part (of) my deposition, is a true copy of the record of that assignment; but I have no other means of knowing whether it is a true copy of the original assignment than the record furnishes. [I have seen on the records of Peoria county what purported to be an assignment of the bond from Waters to Stillman and Stewart, before spoken of, by Francis Church to Isaac Underhill, dated October 15, 1834. The record of the assignment from Church to Underhill, and another assignment from Underhill to John C. Flanagan of the same bond, dated Nov. 12, 1834, is contained in book O, pages 70 and 71. The assignment from Church to Underhill, and from Underhill to Flanagan were recorded by Wm. Mitchell, then Deputy Recorder. The papers hereto attached, marked "E" and "F," and made part of this deposition, are true copies from the record; the first of the assignment from

In Brackets, objected to by deft's counsel.

Church to Underhill, the second of the assignment from Underhill to Flanagan. I have no other knowledge of the two last named assignments than that I find there on the records of Peoria county.] William Mitchell was acquainted with Underhill at the date of the assignment from Underhill to Flanagan. Wm. Mitchell died in October, 1849.

RALPH HAMLIN.

December 29, 1856.

Augustus O. Garrett, examined by Plaintiffs' Counsel.

My name is Augustus O. Garrett; my age is sixty-three years, and I reside in the city of Peoria. I came to Peoria about the 1st of August, 1833, and continued to reside in Peoria till 1849. I am acquainted with the land in controversy in this suit. In the spring of 1834 Isaac Waters occupied, improved and worked the west part of the land; part was sowed in oats, some planted with corn, and some with potatoes. I don't know the number of acres he cultivated, but it was quite a large field; I think over ten acres, and perhaps twenty. The same season I was cultivating a part of the eighty acres lying next west of the land in controversy. I think the land cultivated by Waters in 1834, was the land on which the Russell house was afterwards built. In the fore part of the season—perhaps the latter part of June, 1841, Wren, Darst, and others took possession of the house built by Russell. I remember the date from the fact that I moved into the planter's house late the same year, the 17th of July, 1841.

A. O. GARRETT.

December 31, 1836.

Mark M. Aiken, examined by Plaintiffs' Counsel.

My name is Mark M. Aiken; my age is forty-seven years, and I reside in the city of Peoria. I came to Peoria the 28th of October, 1833, and have resided in that place and near it ever since. I have known the land in controversy since 1833. In the spring of 1834 I rented a small piece of the east half of the land then claimed by Stephen Stillman and William A. Stewart. Stillman went upon the land and showed me the dividing line between the land claimed by himself and Stewart, and that claimed by Waters. Stillman and Stewart's land was enclosed on the east and south, but I cannot swear that there was any fence between them and Waters. Stillman claimed the east twenty acres; Stewart the next twenty acres west, and Waters the forty acres still west of all. Stillman's part had been broke the year before, but not well cultivated; there were apple trees on it at that time; there was a crop of corn and an old hewed log house, which had

been *been* moved there, on the west forty acres. Stillman told me that there was a bond between him and Waters, which was not acknowledged nor recorded; he told me that his nephew, William A. Stewart, was to have twenty acres. Stewart told me that if he (Stillman) did not get the land from Waters, yet that he (Stewart) was to get his twenty acres from his Uncle Stillman. These conversations were at different times. Stillman said there was an agreement between him and Stewart and Waters, by which Stewart was to have twenty acres, and that the agreement was recorded, but that he, Stillman, had declared that agreement void, as a fraud of Waters on him, Stillman. At the time I rented the piece of land from Stillman he told me that he and Waters held the whole land togther, and that he, Stillman, was to pay fifty dollars to enter the east forty, and Waters was to enter the west forty. I have seen Clark Waters write, and I should say his signature, as a witness to the paper herewith filed, marked "I," and attached to this deposition, is his hand writing. I have often seen Isaac Waters and Stephen Stillman write, and think their signatures to the same paper, marked "I," are their hand writing. Stewart told me he sold his twenty acres to Francis Church. I knew Church by sight, and Stewart quite well. Church told me he had sold the twenty acres, bought of Stewart, to Isaac Underhill; this was, when I applied to Church to try it on behalf of another person. I have heard from various sources that Church is dead. Some seven years or more ago, when the bill in this suit was first brought, Flanagan told me he had bought of Underhill and of Wren too at the same time; he claimed through Russell in some way. Aaron Russell was exercising acts of ownership over the west forty of the land in the spring of 1836, in April or May; in that year he built a barn on the land and commenced a house; the house was finished in 1837. Stillman died in 1837. In June, 1838, I was requested by Aquila Wren and William Frisby to go to Quincy and enter the land in controversy immediately; they gave me the money, and I was to enter the land, if possible, in the name of Stephen Stillman; if I could not do that, to enter it in the name of Stillman's heirs; they gave me one hundred dollars in silver. Wren and Frisby knew that Stillman was then dead, and they wished the entry made in his name to save the trouble and delay of obtaining title from numerous heirs. I made the entry in the name of Stephen Stillman; I gave the certificate of entry to Frisby and Wren, and they said "we are now even," "they (meaning other claimants) have a certificate and we have one. Waters has entered it and we have entered it, and it will be several years before a patent will issue." I told them they could get the patent out, of course, through agents at Washing-

ton for twenty-five dollars, and they said they would take that course. Frisby said such claims as those of the heirs of Waters, some being minors, never died, and that he would be willing to give something for them; Wren was present. I understood Frisby and Wren to have a joint interest. Frisby said we lawyers should make a poor spec if we could not get some real estate operations. Abigail Waters, the widow of Isaac Waters, is no doubt dead. I know the heirs of Isaac Waters; three were minors at the time of Waters' death. All the property which descended from Waters to his heirs, and which was considered worth anything, was sold on the execution issued on the judgment obtained by Cross and Gale against them. After the sale the widow and children of Waters went to Wisconsin. I know the handwriting of Thomas Carlin, and have seen him write often. The signature (Thos. Carlin) to the paper marked K, hereto attached, is his handwriting. He was acting Receiver of the Quincy Land Office on the 7th August, 1835. Frisby and Wren are both dead. Clark Waters, the witness to the instrument marked I, resides in Grant county, Wisconsin.

Examined by Defendant's counsel.

On my return from Quincy, when I first found the land subject to entry, I was requested by the land officers to inform the parties in interest of that fact. I did first inform Aaron Russell, and he told me he did not thank any man to attend to his business. He called on me the next day to engage me to attend to the business, and I informed (him) that I was then engaged by Wren and Frisby. He said it was just as he expected, and I told him he was not disappointed.

MARK M. AIKEN.

December 31, 1856.

Seth Fulton, examined by Defendant's Counsel.

My name is Seth Fulton. My age is fifty-four. I reside in Galva, Henry county, Illinois. I came to Peoria in May, 1831, and continued to reside there till 1839. I knew Isaac Waters. He had a family. During the month of April, 1832, Isaac Waters lived with his family on what is now block No. four on Water street, in Peoria. I am acquainted with the east half of the south-east of four, in township eight north, range eight east, in Peoria county. Isaac Waters was never a resident or settler on that land, either before or after the 5th of April, 1832. During the Spring and Summer of 1832, I lived on what is now block No. two in Peoria, on Water street, just above Main street. During the Spring and Summer of 1832, I was often on the land in

question looking for my cows or horses, and I cut hay on it that Summer, and if any one had lived on it I should have known it. There was some ground broke on the tract in May or June, 1832, by Isaac Waters, as I suppose, for I have seen him there at work on some fencing, but he lived on Water street, as I said before. No family lived on the east half that season, I know. Stephen Stillman, in the year 1833, enclosed several acres on the said east half, and ploughed them and planted some onions and apple trees. He built a log cabin on the land, but being unmarried, he lived with different families on adjoining quarters that year, though he often slept in the cabin on the land, and he continued in possession until after the 19th day of June, 1834.

Examined by Plaintiffs' Counsel.

Waters had a log cabin four or five logs high, covered with plank, on the land, which was nearer the west side of the eighty than Stillman's cabin. I cannot tell what year this was. It is so long ago, I cannot recollect the particulars. Waters had a sod fence round a part of the west half, and I think some rails. Stillman's cabin was either rails or boards. Stillman had his cabin built up first. Waters had some land broke and some fence up at the time Stillman's cabin was put up. I cannot tell whether Waters had any corn on the land at the time. I recollect Waters threatening to sue the owner of some horses that had broken into his corn. I don't recollect the year. I was one of the appraisers of the damage done the corn, and I think Johnson Adams was the other. The corn was on the improvement of Waters before spoken of. I can't tell whether Waters' cabin was on the land at the time we appraised the damage. I can't tell how long Waters kept possession of the land. Waters had some land broke, and was making some sod fence, but I don't remember whether this was at the time Stillman was planting onions on the land, as I have before spoken of, or after that time, or before. I recollect the time when I made affidavit for Stillman as to his improvement and settlement on the land, but I do not remember the date. Seeing a copy of the oath I then made, has revived my recollection of the events I speak of, but not the dates of their occurrence. It was seeing my old affidavit that revived my recollection of the dates given in my examination in chief, and the reading of that affidavit was what enabled me to remember the dates there given.

Re-examined by Defendant's Counsel.

I do not remember the date of my affidavit before spoken of. It may have been in 1835 or 1836. SETH FULTON.

January 3, 1857.

Johnson S. Adams, examined by Plaintiffs' Counsel.

My name is Johnson S. Adams. My age is forty-eight years, and I reside in Tazwell county, Illinois. I came to Peoria in 1831. I knew Isaac Waters, the Clerk of the Court, in the latter part of the season or in the Fall of 1832, in warm weather. Waters demanded pay of the commanding officer of a company of United States cavalry for damage done his corn by the horses of the troops breaking in. The officer refused to pay till he knew the extent of the damage, and Waters got in a *pet* and went off to sue him. I understood afterwards that I was appointed one of the appraisers of the damage, but not being a permanent resident, I did not act as appraiser. I don't know the numbers of the land on which the corn was, but it was north of the court-house in Peoria. This is the land on which I understood, both from Waters and Stillman, that they went on to and improved for the purpose of obtaining a pre-emption in partnership that season. I saw that there was corn and oats on the land, and a rail fence. In 1831 or 1832, it appears to me early in *in* the Spring of 1832, but I am not certain, I saw persons raising a house on the land, as I understood, for Stillman and Waters, but I saw only Waters there. This was a hewed log house. The logs appeared old, as if used before. I heard from Stillman that he and Waters were in partnership in obtaining a pre-emption to the land. This was about the time of the raising of the log house, and Waters told me he had a written agreement with Stillman.

Examined by Defendant's Counsel.

I recollect Waters lived on Water street in Peoria previous to the raising the log-house, and he lived there most of the time, but he moved after.

J. S. ADAMS.

Jan. 3, 1837.

Charles Kettelle, examined by Plaintiffs' Counsel.

My name is Charles Kettelle; my age is fifty-one years, and I reside in the city of Peoria. I came to Peoria in the fall of 1833. I was acquainted with Isaac Waters. When I came to Peoria, William A. Stewart was the Recorder of Peoria county, and William Mitchell, his deputy. I was Recorder from 1835 to 1849. I have seen the original record in Book "D," pages 180 & 181 of the paper now shown me, marked "C," and attached to the deposition of Ralph Hamlin, and that original record was in the hand-writing of William Mitchell, then deputy recorder.

I have examined the entry book of the recorder's office for Book "D," and it appears from that entry book that the original of the paper marked "C" just referred to was taken out of the office by William Frisby, attorney for S. Stillman. I was then recorder, and the date of the delivery of the paper, and the words, "William Frisby, attorney for S. Stillman," are in my hand-writing on the entry book. The paper marked "L," and attached to the deposition is, a true copy of the entry book of Book "D," showing when the instrument was filed, when taken out, and by whom taken out; the writing referring to the record of assignment is, I think, in the hand-writing of William A. Stewart, on the entry book. I have examined the original records of the paper marked "E" and "F" attached to the deposition of Ralph Hamlin, and the original record is in the hand-writing of William Mitchell. I have examined the original entry book, and find that the said originals of the papers marked "E" and "F," are marked in my hand-writing as taken out of the office by John C. Flanagan.

Examined by Defendant's Counsel.

My impression is, that Isaac Underhill went into possession the west forty acres of the land in controversy in 1841, and he had been in possession ever since.

CHARLES KETTELLE.

Jan 3, 1857.

A.

Know all men by these presents, that I, Isaac Waters, of Peoria county, State of Illinois, am held and firmly bound unto Moses Pettengill and William Wolcott, in the penal sum of three thousand dollars current money of the United States, for the payment of which, well and truly to be made, I hereby bind myself, my heirs and assigns firmly by these presents. Sealed with my seal, and dated at Peoria, this second day of July, A. D., 1835.

The condition of the above obligation is such, that whereas, the said Moses Pettengill and William Wolcott, have this day purchased of the said Isaac Waters the west half or forty acres of the east half of the south-east quarter of section No four, in town No. eight, north of range No. eight, east of the fourth principal meridian, together with the fractional lots Nos. seven, eight and nine in Block two, in the town of Peoria, adjoining and lying in front of the south-westerly corner of the said forty acres, (reference being had to the plat of said town,) for the sum of fifteen hundred dollars and made payment of four hundred

dollars, given their notes, one for one hundred dollars, payable in sixty days, one other note for five hundred dollars, payable on the first day of January next, and one other note for the residue five hundred dollars, payable on the first day of July, A. D., 1856.

Now, if the payments shall be made on the said notes as aforesaid, then if the said Waters shall execute unto the said Moses Pettengill and William Wolcott a good and sufficient warrantee deed of conveyance for the said tract of land, then this obligation to be null and void, otherwise to be and remain in full force and virtue.

ISAAC WATERS. [SEAL.]

LUCY PETTENGILL,
Witness.

Know all men by these presents, that I, Moses Pettengill, in consideration of ten hundred and fifty dollars to me in hand paid by Aaron Russell, of Cook county, State of Illinois, do by these presents grant, bargrin, sell, assign, transfer and set over to the said Aaron Russell, his heirs, executors, administrators and assigns, the within bond, together with all my right, title, interest, claim and demand in and to the same, or to the tract of land within described, and the privileges and appurtenances to the same belonging, and I authorize the said Aaron Russell, his heirs and assigns in my name or his own, to demand, sue for, receive, have, hold and enjoy the said tract of land, or the said sum of money herein mentioned and interest, to his and their use forever.

In witness whereof I have hereunto set my hand and seal at Chicago, Cook county, this twenty-second day of September, A. D., 1835. MOSES PETTENGILL, [SEAL.]

Signed, sealed and deliverd
in presence of
J. CURTISS.

Know all men by these presents, that I, Wm. Wolcott in consideration of one thousand dollars to me in hand paid by Aaron Russell, of Cook county, Illinois, do by these presents grant, bargain, sell, assign, transfer and set over to the said Aaron Russell, his heirs, executors, administrators and assigns, the within bond, together with all my right, interest, claim or demand in and to the same, or to the tract of land within described, and to the privileges and appurtenances thereunto belonging, and I hereby authorize the said Aaron Russell, his heirs and assigns, in my name or his own, to demand, sue for, receive, have, hold and enjoy the said tract of land, or the said sum of money herein mentioned and interest, to his and their use forever.

In witness whereof I have hereunto set my hand and seal at Adrian, Senawee county, Michigan Territory, this the 2d day of November, in the year of our Lord one thousand eight hundred and thirty-five. WILLIAM WOLCOTT, [SEAL.]

A. FRENCH, JR.

Marked "A" and attached by me,

GEO. T. METCALF,
U. S. Com.

Marked "B" by me, and attached to these depositions.

GEO. T. METCALF,
U. S. Com.

No.	Names of the parties.	Nature of suit.	Process.	Return.
149.	Stephen Stillman, and William A. Stewart, *vs.* The administrators and the heirs of Isaac Waters, deceased.	Bill for specific performance of contract to convey real estate.	Summons.	Served.

	Plaintiffs' Attorney.	Defendant's Attorney.	Remarks.
	Frisby.		Leave to annex bill. Bill withdrawn and suit dismissed.

State of Illinois, Peoria County, *ss.*

I, Enoch P. Sloan, Clerk of the Circuit Court in and for the County of Peoria and State of Illinois, do hereby certify that the above is a true and correct copy of the entries in the docket of said Court, known as the "Judge's Docket," and that the words under the head of "remarks," purport to be the entries made by the Judge of said Court in said cause at the April term of said Court, in the year 1836, as appears by the said "Judge's Docket" now in my office.

Witness my hand and the seal of said Court in Peoria, this twenty-sixth day of December, in the year of our Lord one thousand eight hundred and fifty-six. [SEAL.]

ENOCH P. SLOAN,
Clerk.

Proceedings in the Circuit Court at a term thereof began and held at Peoria, within and for the County of Peoria, on the fourth Monday of April, being the twenty-fifth day of the month, in the year of our Lord eighteen hundred and thirty-six.

To the Honorable Thomas Ford,
Judge of the Sixth Judicial Circuit presiding, to wit:

SATURDAY, April 30th, 1836.

STEPHEN STILLMAN and WILLIAM A. STEWART, *vs.* The Administrators and Heirs of ISAAC WATERS, deceased.	Bill for specific performance of contract to convey real estate.

This day came the complainants, by their attorneys, and on their motion it is ordered that their bill be dismissed.

State of Illinois, Peoria County, *ss.*

I, Enoch P. Sloan, Clerk of the Circuit Court in and for the County of Peoria, State of Illinois, do certify that the foregoing included within quotation marks, is correctly copied from the record of said Court, made at the term thereof began and held on the fourth Monday of April, 1836, which said record is in my office.

Witness my hand and the seal of the said Court in Peoria, this twenty-sixth day of December, in the year of our Lord [SEAL.] one thousand eight hundred and fifty-six.

ENOCH P. SLOAN,
Clerk.

Exhibit "C," attached to the deposition of Ralph Hamlin.

No. 126.

Know all men by these presents, that I, Isaac Waters, of the county of Peoria, and State of Illinois, am held and firmly bound unto Stephen Stillman and William A. Stewart, of the same place, their heirs or assigns, in the penal sum of five hundred dollars current money of the United States, for the payment of which, well and truly to be made and performed, I bind myself, my heirs, executors, administrators and assigns firmly by these presents.

Witness my hand and seal at Peoria, this thirteenth day of July, 1833.

Now, the condition of the above obligation is such that, whereas, Isaac Waters and Stephen Stillman did jointly and by mutual consent, cultivate and improve the east half of the south-east quarter of section four, in township eight, north of the base line in range eight, east of the fourth principal meredian. And whereas, the said land (being eighty acres) came under the last act of Congress, granting pre-emption rights; and the said Stillman, at the time of proving the right to said land, was confined to a bed of sickness, it was mutually agreed that the proof should be made in the name of Isaac Waters, which was done with the understanding that as soon as a title should be obtained by the said Isaac Waters, he should make to Stillman a clear deed to the east half of said tract of land, (the above named Stewart having bought an undivided half of Stillman's half of said tract) he, the said Stewart, to pay one-half of the whole purchase money (fifty dollars) at any time when required to be paid into the Land Office.

Now, if the said I. Waters makes to the said Stillman and Stewart a deed to said land, (being forty acres) as above described, then this obligation to be void, otherwise to remain in full force. ISAAC WATERS.

Witness, RALPH HAMLIN.

State of Illinois, Peoria County, *ss.*

I, James S. Barkman, Clerk of the Circuit Court, and ex-officio Recorder for the county of Peoria, in the State of Illinois, do hereby certify, that the foregoing is a full and correct copy from the records of a bond, as the same is recorded on pages 180 and 181 in book "D," in the Recorder's Office of said county.

Witness my hand and the seal of said Circuit Court, this 30th day of July, A. D., 1836.

[SEAL.] JAMES S. BARKMAN,
Clerk and Recorder.

Exhibit "*D*," attached to the deposition of Ralph Hamlin.

Assignment on Bond of Waters, to Stillman and Stewart.

For and in consideration of the sum of five hundred dollars to me in hand paid, the receipt whereof I do hereby acknowledge, I assign all my right, title, interest and claim unto Frances Church of the within bond, and authorize the within named Isaac Waters to make and execute a deed unto the said Church, the same as he is bound to do to me, the said Francis Church has agreed to pay fifty dollars which the within bond compels

me to pay, which is the consideration of this agreement; the above tract of land is divided by agreement between S. Stillman and myself, he taking the east half of the tract.

RALPH HAMLIN,
WM. A. STEWART.

Dated August 20th, 1834.

STATE OF ILLINOIS, }
Peoria County. } *ss.*

I, James S. Barkman, Clerk of the Circuit Court, and ex-officio Recorder for said county, do hereby certify, that the foregoing is a full and correct copy from the records of an assignment of a bond as the same stands recorded on page 189 in Book "D," in the Recorder's Office of said county.

In witness whereof I hereto set my hand, and affix the seal of said Court at my office in Peoria, this thirtieth day of [SEAL.] July, A. D., 1836.

JAMES S. BARKMAN,
Clerk and Recorder.

Exhibit "E," attached to the deposition of Ralph Hamlin.

For and in consideration of three hundred and fifty dollars to me in hand paid, the receipt whereof is hereby acknowledged, I assign all my right, title, interest and claim of one equal half unto Isaac Underhill, of the within bond, and authorize the within named Isaac Waters to make and execute the deed unto the said Isaac, the same as he is bound to do to me, the said Isaac Underhill has agreed to pay fifty dollars which the within bond compels me to pay, which is the condition of this assignment. The above tract of land is divided by agreement between Stillman and myself, he taking the east half of the tract.

NELSON MONROE,
FRANCIS CHURCH, [SEAL.]

Dated St. Louis, October 15th, 1834.

Exhibit "F," attached to the deposition of Ralph Hamlin.

For and in consideration of the sum of three hundred and fifty dollars to me in hand paid, the receipt of which is hereby acknowledged, I assign all my right, title, interest and claim unto John C. Flanagan of the within named bond, and authorize the within named Isaac Waters to make and execute the deed unto the said John C., the same as he is bound to do to me, the said John C. Flanagan has agreed to pay fifty dollars which the within bond compels me to pay; he has also agreed to pay unto

Francis Church fifty dollars for a note of hand which said Church holds against me, which is the condition of this assignment.

ISAAC UNDERHILL.

JAMES M. BUCKLEY,
Witness.

Dated at Peoria, this 12th day of November, A. D., 1834.

State of Illinois, County of Peoria, *ss.*

I, James S. Barkman, Clerk of the Circuit Court, and ex-officio Recorder of said county, do hereby certify that the above is a correct copy from the records of assignments, as the same stands recorded in book C, on pages 70 and 71, in the Recorder's Office of said county.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at office in Peoria, this thirtieth [SEAL.] day of July, in the year of our Lord one thousand eight hundred and fifty-six.

JAMES S. BARKMAN,
Clerk and Recorder.

"Paper marked 'I,' attached to deposition of M. M. Aiken."

Know all men by these presents, that I, Isaac Waters, of the county of Peoria and State of Illinois, am held and firmly bound unto Stephen Stillman, of the same place, his heirs or assigns, in the penal sum of five hundred dollars, current money of the United States, for the payment of which well and truly to be made and performed, I bind myself, my heirs, executors, administrators and assigns, firmly by these presents.

Witness my hand and seal at Peoria, this first day of November, 1832.

Now the condition of the above obligation is such, that whereas, Isaac Waters and Stephen Stillman did jointly and by mutual consent, cultivate and improve the east half of the south-east quarter of section four in township eight, north of the base line in range eight, east of the fourth principal meridian, and whereas, the said land (being eighty acres) came under the last act of Congress, granting pre-emption rights, and the said Stillman, at the time approving the right to said land, was confined to a bed of sickness, it was mutually agreed that the proof should be made in the name of Isaac Waters, which was done with the understanding that as soon as a title should be obtained by the said Waters, he should make to Stillman a clear deed to the east half of said tract of land, he, the said Stillman, to pay one-half of the

purchase money (fifty dollars) at any time when required to be paid into the Land Office.

Now if the said I. Waters makes to the said Stillman a deed to the said land (being forty acres) as above described, then this obligation to be void; otherwise, to remain in full force.

ISAAC WATERS, [SEAL.]
STEPHEN STILLMAN, [SEAL.]

CLARK WATERS.

Paper marked "L," attached to the deposition of Chas. Kettelle.

When Filed.	Parties' Names.	Description.	Date.	Bond.
1834. Aug. 2d.	Isaac Waters, *vs.* Stephen Stillman and W. A. Stewart.	Bond to convey.	July 13, 1833.	D, 180 and 181.

When taken out.	By whom.	Fees.

Since this bond was recorded, there has been an assignment on the back made by Wm. A. Stewart, and is to be recorded; assignment to Francis Church dated August 20th, 1834, and is recorded on page 189 of book D, February 11, 1836.

WM. FRISBY,
Attorney for S. Stillman.

A true copy from Entry Book "D."
(Attest.) JAMES S. BARKMAN,
Recorder.

Paper marked "K," attached to deposition of M. M. Aiken.

RECEIVER'S OFFICE, QUINCY, ILLINOIS, August 7th, 1835.

No. 3886.

Received from Isaac Waters, of Peoria county, Illinois, the sum of one hundred dollars and — cents, being in full payment for the east half of the south-east quarter of section No. four in township No. eight, north of the base line of range No. eight, east of the 4th principal meridian, containing eighty acres and 100(th) of an acre, at the rate of one dollar and twenty-five cents per acre.

THOS. CARLIN,
Receiver.

$100.00.
Pre act 1832.

RECORDER'S OFFICE,
Peoria County, State of Illinois. } *ss.*

I do hereby certify that the within certificate of entry was this day duly recorded in said office at Peoria, in book G, page 176.
Witness my hand and seal this 13th day of September, 1836.
CHARLES KETTELLE, [SEAL.]
Recorder, P. Co.

And I do further certify that the preceding depositions were reduced to writing by me and signed by the aforesaid witnesses respectively, and the exhibits referred to by them attached, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof. In testimony whereof I have hereunto set my hand and affixed my private seal this thirteenth day of January, A. D., 1857.
GEORGE T. METCALF, [SEAL.]
U. S. Commissioner.

(Endorsed.)
Opened for Judge Purple January 16th, 1857.
WM. H. BRADLEY,
Clerk.
Opened for Judge Terry February 24th, 1857.
WM. H. BRADLEY,
Clerk.

CIRCUIT COURT OF THE UNITED STATES,
For the Northern District of Illinois.

JAMES P. HARKNESS and MARIA HARKNESS, Plaintiffs.
vs.
ISAAC UNDERHILL. Defendant.

Be it remembered, that on the fifth day of January, A. D., 1857, at Peoria, in the county of Peoria and State of Illinois, personally appeared before me, a United States Commissioner in and for said county and State, the attorneys for both parties in a suit then pending in the Circuit Court of the United States for the Northern Circuit and District of Illinois, wherein James P. Harkness and Maria Harkness are plaintiffs and Isaac Underhill defendant, and agreed that the testimony of James Taylor, Augustus Langworthy, James Crow, Marjoram Belford and Isaac Harkness was material and necessary for the said parties in the trial of such suit, and the said attorneys of said parties requested me that the said witnesses might be examined according to the directions of the act of Congress in such case made and provided. Whereupon I ordered that the said witnesses should be examined

de bene esse, before me, at my office in the city and county of Peoria and State of Illinois, and the said parties, by their said attorneys, appearing before me at my office in Peoria, in the county of Peoria and State of Illinois, on the 5th and 7th days of January, A. D., 1857. I have, therefore, proceeded with the examination, and the said witnesses, being first carefully examined and cautioned, and duly sworn by me to testify the truth, the whole truth and nothing but the truth, deposed as follows:

Deposition of James Taylor, taken on behalf of the Plaintiffs.

Examined by Plaintiffs' Counsel.

My name is James Taylor. My age is sixty-six years, and I reside in Ellenwood, Peoria county, Illinois. I came to the city, then the town of Peoria, in the latter part of 1835. In 1836 or 1837, I first knew the south-east quarter of section four, 8 north 8 east of the 4th principal meridian. Early in 1837, I think, I purchased about sixteen acres of the extreme easterly part of that quarter; that is to say, a half interest in sixteen acres. I purchased of Isaac Underhill. At the time of the purchase, I understood from Underhill that his title came from Stephen Stillman, and that by some arrangement Stillman was to have one-half of eighty acres with Isaac Waters, who was to have the west half and Stillman the east half. I think Aaron Russell was on the eighty acres in 1837, and that he was in possession when he died. I think Russell was on the west half of the eighty. The widow of Aaron Russell lived and died there after the death of Aaron Russell. All I know of the possession of Wren is, that I was called on by Jacob Gale to assist him in re-taking possession from Wren. I understood Mr. Gale to be acting on behalf of Russell's heirs or his administrators. Quite a number of persons went up with Mr. Gale, and Mr. Gale and John Reynolds took a large rail to beat in the door. I said, let me hold a parley with Wren. He came to the window, presenting a pistol, and told me to keep off. I told him I was unarmed, and wished to talk with him. He then lowered his pistol, and I asked him if it was his intention to shoot any one who attempted to take possession from him. He said, I do, so help me God. The party with Gale then retired and Wren remained in possession, and kept it for some years.

Examined by Defendant's Counsel.

I don't recollect that any of the eighty acres were fenced when I first knew it.

Re-examined by Plaintiffs' Counsel.

After the patent issued to Stephen Stillman, and was received, there was rejoicing among those interested in the matter.

JAMES TAYLOR.

January 5th, 1857.

Deposition of Augustus Langworthy, taken on behalf of the defendant:

Examined by Defendant's Counsel.

My name is Augustus Langworthy; my age is sixty-eight years, and I reside in Bureau County, Illinois. I came to the town, now city of Peoria, in March, 1825, and resided a short time, then I went away, and afterwards returned to Peoria in 1829, and remained there till May or June, 1834. I knew the south-east quarter of section four, 8 north, 8 east of the 4th meridian, and lived on the adjoining fraction from 1829 till 1834. I knew Isaac Waters very well. Isaac Waters, during the winter and summer of 1832, lived on Water street in the original town of Peoria, below Main street; he did not reside on the land in controversy before the 5th of April, 1832, to my knowledge. I was often across the land, and should have known it if he had resided there. I knew nothing of Waters putting up a cabin on the land at any time. I was in the Black Hawk war, and I mustered the troops about the first of May, 1832; at that time I knew of no person living on the land in controversy, and no cabin on the land. I had a conversation with Isaac Waters respecting his having a right of pre-emption on the land in question; I don't remember the time he asked me if I thought he could get one; I said I thought it was too late; and I think this conversation must have been after this 5th April, 1832, as the language above seems to imply that.

Examined by Plaintiffs' Counsel.

I don't recollect seeing any improvements on the east half of the quarter of section 4 during the year 1832. There was no corn planted on that land that year to my knowledge; there was no sod fence on the land at that time; there was a sod fence but it was long after 1832; I don't remember when the sod fence was put there. The troops who went from Peoria to the Black Hawk war, returned, some of them in the summer of 1832, and some in the fall of 1832. I was in Peoria when the first of the Peoria troops returned; those who returned first were mostly on foot and had their pack horses with them; the horsemen returned

in the fall or latter part of summer. I never heard of Waters complaining of the returning troops destroying his corn at that time; Waters and myself seldom met, our business not calling us together; I saw him but seldom. The conversation I had with Waters about his pre-emption spoken of in my examination, in chief, was at my house, and no one was present but members of my own family, these quite young. Waters' reply to my remarks was, that if he could not get a pre-emption under the law of 5th April, 1832, he might get it under some other law. I don't recollect that Waters said in that conversation that he had any improvements on the land, but that he contemplated making some; that is the way I understood it. I don't know whether there was any improvement on the east half of the land in 1833, but there was a fence before I left in 1834. I don't recollect that there was any building on the land, and if there was, no one lived there. I have no knowledge from Waters or Stillman that they had any arrangement respecting the land; there was among the neighbors the report that some such agreement existed, and this report I heard about the time I left Peoria in 1834. I never knew of Waters or persons in his employment, working or making improvements on the east half of the land before I left Peoria in 1834. I have no distinct, clear recollection of being on the land in 1832 or 1833, or at any particular time. In 1834 I was on the boundary of the land; I was frequently across the land every year during my residence in the adjoining fraction. I never saw Stephen Stillman improving any part of the land in 1832, 1833 or 1834, or on the land. I knew William A. Stewart; I don't recollect his making any claim on the land, or having any. I heard Stewart's name mentioned in connection with the land. I know Asahel Hale; he came to Peoria in 1830, or thereabouts; my recollection of dates is in some cases distinct, in some not.

AUGUSTUS LANGWORTHY.

January 5th, 1857.

James Crow, examined by Plaintiffs' Counsel.

My name is James Crow; my age is fifty years, and I reside in Limestone township, Peoria county. I came to Illinois in 1831, and lived near to the town of Peoria, from November, 1831, till June, 1832. I was acquainted with the land in controversy in this suit. Isaac Waters lived on the land in April, 1832; I saw him there between the 1st and 8th of April; I understood him to be on the west half of the east half of the land. In April, 1832, I was out shooting prairie chickens, and I went to the

house where Waters was; there was smoke from the chimney or stove-pipe of the house; there was a small bedstead stood at the left side of the door. [He said he was living there, but did not say how long he had been there.] At that time there was a fence on the land partly sod and partly rail, enclosing, perhaps, four or five acres. The house was a sort of a poor concern, covered with planks and slabs; a temporary concern. I think there was a small patch of wheat in one corner of the enclosure; I am not certain when I saw the wheat; it may have been in the fall of 1831; I ploughed a piece of land in the spring of 1832, near this enclosure and house above spoken of, and planted it in corn; I commenced plowing my land on the 8th of April, 1832. I saw Waters at the house above spoken of three or four, certainly, two or three days before the 8th of April, 1832. Stephen Stillman told me he was to have the east half of the land, and Waters was to have the west half. After I left Peoria in June, 1832, I returned again in 1835, and have lived in Peoria county ever since.

In brackets, objected to by deft's counsel.

Examined by Defendant's Counsel.

Previous to the time I saw Isaac Waters at the house above spoken of, he lived on Water street in Peoria. I don't know how long Waters lived at the house on the land; I saw him there only once, as above I have stated; I may have passed the house on the land after that time, but never saw Waters there any more. When I saw him in the house, I saw no other person; Waters was standing on the door step and the door shut; the bedstead I spoke of outside the door; I did not see Waters' wife or children there; the door was shut; shortly after that I saw Waters and his family at the house in town, where he had lived during the winter; this was a few days afterwards; the reason I remember that, I commenced ploughing on the 8th of April, was that it was 1832, and the Black Hawk war, and besides, Waters had sowed wheat on the same piece of land on the 2d day of April, and I thought I would commence ploughing about six days after him, and I remember the date of the 2d April, because he was sowing wheat in the spring, and I just came to the country, and had never seen wheat sown in the spring of the year. When I left Peoria, on the 9th of June, 1832, Waters with his family was living in his house on Water street.

Re-examined by Plaintiffs' Counsel.

After the time I saw Isaac Waters in the house on the land, I saw smoke from the house every day, but saw no person. Clark

Waters came over where I was ploughing on the 8th of April, 1832, and said he had moved into the house, and that his father had moved out night before last.

his
JAMES ⋈ CROW.
mark.

January 5, 1857.

Marjoram Belford, examined by Plaintiffs' Counsel.

My name is Marjoram Belford; my age is sixty-five years, and I live in Peoria county. I came to Illinois in 1830, and to Peoria in 1831. I have lived in Peoria county nearly all the time ever since; I know the land in controversy in this suit; the first improvement on the land was made in 1831, late in the fall, and was made by some person for Isaac Waters; it was fencing and breaking; in the winter of 1831–'2, I was hauling wood to Peoria, and crossed the land every day, some times two or three times a day; the first person I ever saw living on the land was Isaac Waters; this was the last of March, or first of April, 1832; I think I saw Waters there for a week or more, and stopped to speak with him often; he said he lived there, and I saw his things there, a bed and some boxes, and chairs, and pots and skillets; there appeared to be from three to five acres enclosed; part a pretty good fence; the enclosure run north and south, and was longer than it was wide. The spring of the Black Hawk war I rented a piece of the land from Waters; I went to the war, but before I went, I planted the land I had rented; I saw Waters living there before I rented the land; once when I saw him there, there was a smart squall of snow; I knew from the neighbors that Waters invited some of them up to his shanty; I did not go.

Examined by Defendant's Counsel.

During the winter of 1832 Waters lived at the ferry. Before I went to the Black Hawk war, I think Waters moved away from the shanty down home; Waters lived in the shanty a week or more; his family I think, staid at home while Waters was at the shanty alone; the shanty was some old logs of hickory and maple; a small house.

his
MARJORAM ⋈ BELFORD.
mark.

January 5, 1857.

Isaac Harkness, examined by Plaintiffs' Counsel.

My name is Isaac Harkness; my age is fifty-two years, and I reside in Peoria county. I came to the town, now city of Peoria, in 1829, and have resided in Peoria county ever since, except about one year. In the fall of 1831, and in the winter of 1831

and 1832, I resided in Peoria county about 20 miles west of Peoria. I know the land in controversy in this suit. In February or March, 1832, I boarded with Isaac Waters, and hauled rails for him on to the land in question, for the purpose of enclosing the land claimed by Stephen Stillman and Isaac Waters. Waters paid me for the hauling and employed me to do it; at the same time Stephen Stillman was boarding with Waters. I heard conversations frequently between Waters and Stillman, respecting the land in question, in which conversations it seemed to be understood between them, that each was to have one-half the land, and I also understood, either from Stillman or Waters, probably from Stillman, that William A. Stewart was to have one-half of Stillman's part. I knew the Waters' family, and am a brother of James P. Harkness, the complainant. James P. Harkness and Maria Waters, the daughter of Isaac Waters, were married in 1828. In January, 1844, most of the family and heirs of Isaac Waters, moved from Illinois to Wisconsin. They were all in poor circumstances at the time, having no property that they could command. I think three of the heirs were minors at that time. The youngest heirs of Isaac Waters is now of age. The wife of Isaac Waters was named Abigail; her maiden name was Clark. She went to Wisconsin, and is reported to be dead. I derived the knowledge of her death from her children.

Examined by Defendant's Counsel.

At the time I was hauling rails for Waters, he lived with his family on Water street in the town of Peoria; during this time I have no recollection of seeing any house on the land in question.

ISAAC HARKNESS.

January 7th, 1857.

And I do further certify, that the preceding depositions were reduced to writing by me, and signed by the said witnesses respectively, on the days on which said depositions are respectively dated, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

In testimony whereof I have hereunto set my hand and affixed my private seal, this 17th day of February, A. D., 1857.

GEORGE T. METCALF, [SEAL.]
U. S. Commissioner.

Endorsed.

Opened for Judge Terry, February 25th, 1857.

WM. H. BRADLEY,
Clerk.

CIRCUIT COURT, UNITED STATES,
For the Northern District of Illinois.

JAMES P. HARKNESS and MARIA HARKNESS, Plaintiffs.
vs.
ISAAC UNDERHILL. Defendant.

Be it remembered, that on the eighth day of May, A. D., 1857 at Peoria, in the county of Peoria, and State of Illinois, the defendant, Isaac Underhill, personally appeared before me, a United States Commissioner in and for said county and State, and made oath that he was the defendant in a suit then pending in the Circuit Court of the United States for the Northern Circuit and District of Illinois, wherein James P. Harkness and Maria Harkness are plaintiffs, and that the testimony of Aquila Moffatt, Clementius Ewelt, John Ewelt, John Johnson, Peter Menard, R. S. Doolittle, John Bristal, Charles Ballance, Jacob Gale, Rudolphus Rouse, George C. Bestor, John Hamlin and Ralph Hamlin, was material and necessary for the said defendant in the trial of such suit, and that they, the said witnesses, lived at Peoria county, and in the county of Tazwell and State of Illinois, more than one hundred miles from Chicago, where the Court at which the said deponent expected the said cause would be tried, was appointed by law to hold, and that James P. Harkness and Maria Harkness, the above named plaintiffs, resided in Wisconsin, about one hundred miles from Chicago aforesaid, and that Grove & McCoy, their attorneys, resided at Peoria, in the county of Peoria, about one hundred and sixty miles from Peoria aforesaid, and the said deponent requested me, that the said witnesses might be examined according to the directions of the act of Congress in such case made and provided, whereupon, I ordered that the said witnesses, except Charles Ballance, George C. Bestor, John Hamlin, and Ralph Hamlin, should be examined *de bene esse*, before me, at my office in Peoria, in the county of Peoria and State of Illinois, and that three days' notice should be given to the said Grove and McCoy, the plaintiffs attorneys, of such examination, to the end that they might, if they should see fit, be present at the examination and put interrogatories, and I having satisfactory proof, that such notice had been given and the said parties by their respective attorneys, appearing before me, at my office in Peoria, in the county of Peoria and State of Illinois, on this 22d day of May, A. D., 1857. I have therefore proceeded with the examination, and the said witnesses being first carefully examined, and cautioned, and duly sworn by me to testify the truth, the whole truth, and nothing but the truth, deposed as follows:

The deposition of John Ewalt.

Examined by Defendant.

My name is John Ewalt. I reside in Peoria county, Illinois, and my age is seventy-two years. I came to Peoria in 1831, and Isaac Waters then lived on Water street in the town of Peoria, and I never knew him to live anywhere else till he moved out into the county to Harkness Grove. I knew Isaac Waters; he was Clerk of the Peoria Circuit Court. I think Waters lived in the town of Peoria for two or three years after I came to Peoria; at any rate, till after the Black Hawk war of 1832. I knew Waters well, and after had business with him.

Examined by Plaintiffs.

I reside twenty-two miles from the town of Peoria. I moved to that place in 1831 and 1832, and have resided there ever since. Waters might have lived elsewhere than on Water street. I did not keep track of him, but he lived on Water street in 1831; he may, in the mean time, have lived in other places, for ought I know, over the river.

Re-examined by Defendant.

I think I staid at Waters' one night, and he told me that he and his wife went out somewhere, and ate their supper, and fixed some place to obtain a pre-emption on some land. I don't know what land or where it was. It is my impression [is] that this was after the Black Hawk war of 1832. Waters, at that time, had a wife and quite a number of children, as many as five.

JOHN EWALT.

The deposition of Rawley S. Doolittle.

Examined by Defendant.

My name is Rawley S. Doolittle. I reside in Tazwell county, Illinois, and am about fifty years of age. I resided in Pekin in 1832. I knew Waters, and in the spring of 1832, before the Black Hawk war, I found Isaac Waters living on Water street in Peoria. That was the only time I was ever in his house, but I never knew him to live anywhere else. I think the time I found him at his house was in the month of April, 1832.

R. S. DOOLITTLE.

Deposition of Clementius Ewalt, examined by Defendant.

My name is Clementius Ewalt; my age is forty-three years, and I reside in Peoria county, Illinois. I knew Isaac Waters first, just about the first day of April, 1832; he then lived on Water street in Peoria, near the old fort. The next time I was in Peoria was in the month of April, 1832; he was then living on Water street, and he told me to tell our people that the pre-emption act had passed and become a law.

Examined by Plaintiffs.

The time I first saw Waters may have been the ast of March, but I think it was the first day of April, 1832; I cannot fix the precise day; I know the second time I saw him was in April.

CLEMENTIUS EWALT.

Deposition of Peter Menard, examined by Defendant.

My name is Peter Menard; I reside in Tazwell county, Illinois, and my age is fifty-eight years. I knew Isaac Waters very well. In 1832 his residence both in April and May of that year was on Water street, in Peoria. I don't know that he resided any where else than on Water street in April and May, 1832. There were but few families then in Peoria, about eight or ten, and I knew Waters very well; if he had resided elsewhere during the time, I think I should have known it. I was in Peoria during the fore part of April, 1832, and saw Waters very often, perhaps every day.

Examined by Plaintiffs.

I can't say that Isaac Waters was in his residence on the fourth of April, 1832; he may have been absent or resided elsewhere on that day. I heard often that the land in controversy was to be divided between Stephen Stillman and Waters; I think I heard Stillman say so, but am not certain. I heard from many persons that there was a written agreement between Stillman and Waters respecting the land, but don't know that I ever heard Stillman say so.

P. MENARD.

Deposition of Jacob Gale, examined by Defendant.

My name is Jacob Gale; I reside in the city of Peoria, and my age is forty-three years. I think Isaac Underhill came into possession of a part of the land in controversy in 1841 or 1842, and remained in possession by himself or tenants for ten years or

eight years thereafter. I lived on adjoining land. His possession extended to all the land in controversy except what Stillman possessed.

Examined by Plaintiffs.

I came to Peoria in June, 1834; Underhill came into possession by purchase from William Frisby or Aquila Wren, who had possession before. Wren took possession in the manner stated in my former deposition in this case.

Re-examined by Defendant.

Jacob Durst, with his brother, took possession for and on behalf of Wren, and I have understood him to be interested in this suit.

JACOB GALE.

Deposition of John Bristal, examined by Defendant.

My name is John E. Bristal; I reside in Peoria county, and my age is forty-five years. I was in Peoria in 1832, and enlisted for the Black Hawk war; in Peoria I knew Isaac Waters; he lived on Water street, in Peoria, in April, 1832; he lived no where else during the month to my recollection. I saw him frequently.

Examined by Plaintiffs.

I know the land in controversy. I don't recollect that there was any improvement on the land in 1831 or 1832. I think Isaac Waters must have moved into Peoria in March, 1832. I don't pretend to say that Isaac Waters never lived any where else than on Water street in 1832. I never knew him to live any where else during that time.

Re-examined by Defendant.

I saw Isaac Waters frequently about that time, and if he had lived any where else than on Water street, I think I should have known it. I worked on land adjoining the land in controversy in 1831, and I don't know that Waters made any improvement on the land in 1831, and up to the spring of 1832.

Re-examined by Plaintiffs.

I left Peoria and went to La Salle Prairie on the 17th March, 1832, and made it my home there during the season. I was in the Black Hawk war, and was back and forth from La Salle to Peoria every week or two weeks. La Salle Prairie is ten miles from Peoria. I did not reside in Peoria in April, 1832.

J. E. BRISTAL.

Deposition of Aquila Moffatt, examined by Defendant.

My name is Aquila Moffatt; I reside in Peoria county, near Peoria, and am fifty-five years of age. I came to Peoria in 1822. I knew Isaac waters very well; he resided on Water street in Peoria, in April, 1832; I did not know of his residing anywhere else in March and April, 1832. Isaac Underhill has had possession of the land in controversy for ten years or more last past.

Examined by Plaintiffs.

I think I know the land in controversy, but cannot tell the precise lines. I know nothing but hearsay concerning Isaac Waters improving the land in controversy in 1832; I do not know that Isaac Waters lived all the time on Water street in 1832; that was his place of residence, but from hearsay he was said to have been somewhere else part of the time. [I *heard* that Waters moved upon to the land in controversy, put up a kind of camp, staid all night, proved up his pre-emption, and moved back next day.]

In brackets, objected to by Defendants.

From conversation with Stephen Stillman I learned that Waters was to go on to the place and get a pre-emption right, and it was to be divided between Waters and Stillman and Nicholson. I have seen a house on the land, called Waters' house, and I think Waters lived in it too. I fix the time of Underhill's taking possession of the land from the time of setting out the locust trees on the land; I can't tell whether the land was fenced at that time, but my impression is that it was fenced.

Re-examined by Defendant.

The locust trees were set out in the *the* lane in 1841, I think, and Underhill then had possession.

Re-examined by Plaintiffs.

I don't know how Underhill had possession of the land in controversy.

AQUILLA MOFFATT.

Deposition of Rudolphus Rouse, examined by Defendant.

My name is Rudolphus Rouse; I reside in the city of Peoria, and am sixty-three years old. I think I know the land in controversy, but not the precise lines. Underhill had possession of the land in 1841 or 1842, and to the best of my knowledge he has been in possession ever since by himself or tenants.

Examined by Plaintiffs.

I came first to Peoria in 1832, and brought my family in 1833. I knew Isaac Waters very well in 1833; there was an enclosed field on the land and an old log house, and it was called Waters' field. Mr. Nicholson claimed the land also. I used to see Waters' family gather squashes, cucumbers, onions, &c., from the land. The enclosed field contained thirty acres I should think.

R. ROUSE.

Deposition of John Johnson, examined by Defendant.

My name is John Johnson; I reside in Peoria county, and I am fifty-nine years old. I first came to Peoria on the 7th day of October, 1831, and moved to La Salle prairie in January, 1832, and from 1831 till 1836 was in Peoria twice a week, or thereabouts. I knew Isaac Waters very well; he lived during March and April, 1832, on Water street in Peoria; if he had resided anywhere else during that time, I should have known it, because I saw him often, and was frequently at his house on Water street. I know the land in controversy, but not the precise lines of the land. The locust trees on the land were set out in 1841, and Underhill was then in possession of the land lying east of the lane, and has continued in possession till the land was laid out into lots, some four or five years ago.

Examined by Plaintiffs.

I don't know that Waters, on the 4th and 5th of April, lived on Water street; I don't think he could have lived with his family anywhere else than on Water street at that time. I did not track him every day; I did not know of his family living anywhere else. I was in Peoria the first week of April, and was boating wood across the river, and about the middle of April I went to ploughing on La Salle prairie. I was not acquainted with the land in controversy till 1833 or 1834.

JOHN JOHNSON.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed by the said witnesses respectively on the said 22d day of May, 1857, at my office in Peoria aforesaid, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

In testimony whereof I have hereunto set my hand and affixed my private seal, this 23d day of May, A. D., 1857.

GEO. T. METCALF, [SEAL.]
U. S. Commissioner.

And on Wednesday, the tenth day of February, in the year A. D., 1858, in the December term, A. D., 1857, of said Court, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

JAMES P. HARKNESS, AND MARIA, HIS WIFE, *vs.* ISAAC UNDERHILL. } In Chancery.

Now come the parties, by their respective solicitors, and by agreement, this cause is set down for hearing on the bill, the answer, replication and testimony on file, and after proceeding in the hearing until the hour of adjournment without concluding the same, the further hearing thereof is postponed until to-morrow morning.

And afterwards, to wit: on Thursday, the eleventh day of February, in the year last aforesaid, in the December term, A. D., 1857, of said Court, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

JAMES P. HARKNESS and MARIA, HIS WIFE, *vs.* ISAAC UNDERHILL. } In Chancery.

Now come again the parties, by their respective counsel, and after progressing again in the hearing and argument of the cause until the hour of adjournment without concluding the same, the concluding arguments of counsel are postponed until to-morrow morning.

And afterwards, to wit: on Friday, the twelfth day of February, A. D., 1858, in the December term, A. D., 1857, of said Court, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

JAMES P. HARKNESS and MARIA, HIS WIFE, *vs.* ISAAC UNDERHILL. } In Chancery.

Now come again the parties, by their respective counsel, and after hearing the concluding arguments of counsel, the Court, not being now sufficiently advised in the premises, takes time to consider.

And afterwards, to wit: on Thursday, the first day of December, in the year A. D., 1859, in the October adjourned term of said Court, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

JAMES P. HARKNESS and
MARIA HARKNESS,
vs.
ISAAC UNDERHILL. } In Chancery.

Now come the parties, by their solicitors, and the Court having considered and being now fully advised of the matters submitted herein in the bill, answers, proofs and argument of counsel in this cause made, does order, adjudge and decree, that the bill be dismissed at the complainants' costs.

It is thereupon considered by the Court that the defendant do have and recover of and from the complainants, the costs and charges by him expended in this behalf; and thereupon the complainants pray and appeal to the Supreme Court in this behalf.

And afterwards, to wit: on the seventeenth day of December, in the year last aforesaid, came the said complainants and filed in the office of the Clerk of said Court, their appeal bond in said entitled cause, which said bond is in the words and figures following, to wit:

Circuit Court of the United States,
for the Seventh Circuit and
Northern District of Illinois.

Northern District of Illinois, *ss.*

JAMES P. HARKNESS, and
MARIA HARKNESS,
vs.
ISAAC UNDERHILL. } Appeal.

Know all men by these presents, that we, James P. Harkness, by Jacob Darst, his attorney in fact, Maria Harkness, by Jacob Darst, her attorney in fact, Jacob Darst and Thomas Bryant are held and firmly bound unto the above named Isaac Underhill in the sum of five hundred dollars, to be paid to the said Isaac Underhill, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals, and dated at Peoria, this 17th day of December, A. D., 1859.

Whereas, the plaintiffs above named, James P. Harkness, and Maria Harkness, hath prayed an appeal to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the Circuit Court of the United States for the Seventh Circuit and Northern District of Illinois.

Now, therefore, the condition of this obligation is such, that if the above named James P. Harkness and Maria Harkness, shall prosecute their appeal to effect—then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Sealed and delivered in presence of witnesses.

JAMES P. HARKNESS, [SEAL.]
By his attorney in fact, JACOB DARST, [SEAL.]
MARIA HARKNESS, [SEAL.]
By her attorney in fact, JACOB DARST, [SEAL.]
JACOB DARST, [SEAL.]
THOMAS BRYANT, [SEAL.]

State of Illinois, City of Peoria, County of Peoria.

Thomas Bryant, James P. Harkness, Maria Harkness, by Jacob Darst, their attorney in fact, and Jacob Darst, in his own proper person, this day personally appeared before me, and acknowledged the execution of the foregoing bond to be the act of the several persons whose names are thereto subscribed, and said Thomas Bryant, being by me first duly sworn, says that he is worth at least the sum of ten thousand dollars, after paying all of his debts of whatever nature.

THOMAS BRYANT, [SEAL.]

Jacob Darst, above mentioned, being first duly sworn, says that he is worth at least the sum of ten thousand dollars, over and above the payment of his debts of whatever kind and nature.

JACOB DARST, [SEAL.]

State of Illinois, City of Peoria, }
Northern District of Illinois. }

I, Geo. P. Blakeley, United States Commissioner, do certify, that on this day, the foregoing acknowledgements and affidavits were taken before me.

GEORGE S. BLAKELEY, [SEAL.]
U. S. Commissioner.

Peoria, Dec. 17th, 1859.

Approved.
THOMAS DRUMMOND.

Endorsed.
Filed December 17th, 1859.

WM. H. BRADLEY,
Clerk.

The citation issued in the above entitled cause, is in the words and figures following, to wit:

United States of America, *ss.*

To Isaac Underhill, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois, wherein James P. Harkness and Maria Harkness are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Thomas Drummond, one of the Justices of said Court, this 18th day of July, A. D., 1860.

THOMAS DRUMMOND.

(Endorsed.)
Filed July 19th, 1860.
WM. H. BRADLEY,
Clerk.
Services accepted July 18, 1860.
N. H. PURPLE,
Sols. for defts. in error.

Northern District of Illinois, *ss.*

I, William H. Bradley, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the foregoing to be a full, true, and complete transcript of the record and proceedings of the cause wherein James P. Harkness and Maria Harkness, his wife, were complainants, and Isaac Underhill was defendant on the Chancery side of said Court, as the same remains of record in said Court and now in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said [SEAL.] District, this twenty-third day of August, in the year of our Lord one thousand eight hundred and sixty, and of our Independence the 85th year.

WM. H. BRADLEY,
Clerk.

JAMES P. HARKNESS AND MARIA HARKESS
vs.
ISAAC UNDERHILL.

And the said plaintiffs, by their attorney, come and say, that in the record and proceedings herein manifest error hath intervened, in this—the court erred in dismissing the said bill and rendering a decree in favor of the said defendant and against the said plaintiffs, when by the law of the land it should have been in favor of the plaintiffs and against the defendant, for which error the said plaintiffs pray that the said decree may be reversed.

WILLIAMS, *Sol. for Pl't'ffs.*

APPELLEE'S BRIEF.

SUPREME COURT OF THE UNITED STATES.

No. 160.

JAS. P. HARKNESS AND MARIA HARKNESS, APP'TS,

VS.

ISAAC UNDERHILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

H. POLKINHORN, printer, 375 & 377 D st., Washington, D. C.

IN THE

Supreme Court of the United States.

JAMES P. HARKNESS, MARIA HARKNESS, his wife, vs. ISAAC UNDERHILL.	No. 160. December Term, 1861.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

APPELLEE'S BRIEF.

I.

The Register and Receiver, and the Commissioner of the General Land Office were legally authorized to rescind and set aside, or to treat as a nullity the entry made by the heirs of Waters, and to permit Stillman or his heirs or assignees to enter the land.

1st. Because such has been the contemporaneous construction of all the pre-emption laws, the Commissioner of the General Land Office having exercised this power at an early period, and from the time of the passage of the act of 5th of April, 1832, to the present time, under all the pre-emption laws which have been passed. 2d Land Laws, p. 646, No. 606.

2d. It is the settled law of the land, as established by numerous decisions.

In the case of Lewis vs. Lewis, a claim was filed in 1840, under the act of June 22, 1838. Here was a decision by the Register and Receiver. An appeal was taken to the Commissioner of the General Land Office, upon the hearing of which the decision of the Register and Receiver was af-

firmed. Held that the decision was conclusive. Lewis vs. Lewis, 9 Mo., p. 183.

The Court say, in the opinion given in Groom vs. Hill, 9th Missouri, 322, "It is the duty of the Commissioner of the General Land Office to revise the proceedings of the Register and Receiver, and vacate entries which may have been illegally made, and thereby arrest the completion of the title originating in fraud, mistake, or violation of law."

Again, it is laid down. that in all the general pre-emption laws, from 1814 to 1843, the Register and Receiver are, by law, entrusted with the power of deciding who is entitled to pre-emption. The Commissioner of the General Land Office is authorized to superintend and revise the proceedings of the Register and Receiver. The Commissioner may, perhaps, direct in what manner that discretion shall be exercised, and the action of the Register and Receiver, in accordance with the instructions of the Commissioner, may be considered conclusive. Perry vs. O'Hanlon, 11 Mo., 585; Huntsucker vs Clark, 12 Mo., 333; Nelson vs. Simms, 23 Miss., 383; Glenn vs. Thistle, 23 Miss., 42; Mitchell vs. Cobb, 13 Ala., 137; Dickinson vs. Brown, 9 Smeade and Marshall, 130.

The case of Gray vs. McCance, 14 Ill., is directly in point on the question at issue. The Commissioner of the General Land Office decided that Gray's entry was a nullity upon its face, a fraud upon the Government, and ordered it to be set aside; the evidence also showing clearly that the entry was illegally made. The decision of the Commissioner was also held to be conclusive upon the parties. There is no essential difference between that case and this.

Gray's entry was made under the act of June 1, 1840, which revived the act of June 22, 1838.

See also, as to this point, McGhee vs. Wright, 16, Ill, 555.

This act of June 22, 1838, revived the act of May 29, 1830. 1 Land Laws, p. 473.

Neither of these acts confers on the Commissioner of the General Land Office any direct, positive authority to exam-

ine into pre-emption claims, to settle or adjust conflicting claims, or to set aside or vacate an entry made by permission of the Register and Receiver.

The act of the 29th of May, 1830, requires that proof shall be made to the satisfaction of the Register and Receiver, agreeably to the rules prescribed by the Commissioner of the General Land Office, which is all the authority given by the act for the Commissioner to supervise the proceedings.

The act of June 23, 1838, simply revives that of May 29, 1830, and extends its provisions and benefits to persons who were residents or occupants at the time of the passage of the former act. It makes no change in the law of 1830, except that before a patent issues, after the entry, the applicant is required to make an oath, to be filed with the Register and Receiver, and forwarded to the Commissioner of the General Land Office, "That he entered the land in his own right, and has made no contract to sell, etc." It was under these acts, that the decision in the case of Gray vs. McCance was made.

The decision is conclusive of this case, unless the Supreme Court of the State of Illinois has mistaken the law.

II.

Waters never was at any time settler and housekeeper upon the land in controversy.

The complainant's own testimony proves this point, without the aid of any of the defendant's evidence.

The witnesses who speak of Waters being on the land on or about the 5th of April, 1832, are, James H. Eads, Thomas G. Eads, William Eads, Majorum Belford, and James Crow. (Record, pp. 51, 61, 62, 82, 80.)

These are the only witnesses who saw Waters on the land about the 5th of April, 1832.

Belford and Crow (Record, pp. 80, 82) think they saw him there several days, but his family lived at another place. In the language of the witnesses, "The family staid at home while he was at the shanty." Crow saw him there only

once, and shortly afterwards on Water street, living with his family, where they had previously resided.

James H. Eads says: "Waters went on with his family *right away* after the first pre-emption law came out in 1832." He does not state how long he remained. "That he went on a month or two after the law came out." (R., p. 51.)

Thomas G. and William Eads say: "Waters built cabin and moved in with his family 3d or 4th of April, 1832; staid two or three days and nights and returned to his old residence on Water street. Don't know that all his family were there; he took up some furniture, and invited some neighbors up there to supper." (Record, pp. 61, 62,)

The evidence of the complainant in brief is, that at some time in 1832, Waters was in a shanty on the land, and may have staid there two or three days and nights, with a portion of his family and furniture, his actual residence being all the time, before, at, and after, on Water street, Peoria, on other and different, and not on public lands. The precise time of his visit to this shanty is uncertain. But one of these witnesses could either read or write. Their recollections of particular dates are not to be trusted, and the reasons they give for such recollections are wholly unsatisfactory.

Crow remembers it because he was out hunting prairie chickens; Eads because Waters went on to secure the pre-emption, and others for equally frivolous causes.

And when all is summed up, so far as complainant's own showing is concerned, it amounts to this only: That in order to secure a pre-emption to this land, Waters, at some time in 1832, was on the land, perhaps over one or two nights, and pretended to be a housekeeper and settler thereon, when in fact he was a housekeeper, living in the town of Peoria, on another tract of land. No witness saw him there more than once, all say he went there not to *settle or keep house*, but to get a pre-emption to the land under pretense of doing so.

Was he then a *settler* and *housekeeper*, within the meaning of the act of April 5th, 1832? 1 Land Laws, p. 494.

There is a plain and palpable distinction between a *settler* and *housekeeper* on public lands, and a *settler* and *occupant* of such land.

A settler and occupant of the public lands need not necessarily reside in a house upon the particular tract of land claimed. It is not indispensable that he should be a housekeeper anywhere; he need only be a settler, and occupy by cultivation or enclosure; he need not live on the same land; but to be a *settler* and *housekeeper* on the public lands, a party must live and keep house on the land, not for a day, or a night or two, in a temporary pen or hovel, without floor, roof, or furniture, but with a family, if he has one, and with an intention of making the land a permanent place of residence and means of livelihood.

A pioneer who camps for the night upon the public lands, lights his camp fire, and prepares his meals, would be as much a *settler* and *housekeeper* as Waters was.

He went on to the land, not to settle and keep house there, but to give to some ignorant or unscrupulous witness a pretext to swear to that which he knew was untrue.

Contrast this evidence with that of the defendant, keeping in mind the fact that all the witnesses state that he was never on the land, claiming to be a resident, but once. Let us look first at his own affidavit, under which his pre-emption was procured.

On the 24th of September, 1832, he makes his affidavit, stating, in the present tense, "I am a settler and housekeeper," &c. A man by the name of Trail swears likewise. Mr. Ballance was called on to do so, but declined, because he knew, and they knew, that the statement was untrue. (Record, pp. 11, 55.)

Where did Waters live in April, 1832? At this time there were not more than eight or ten families, and only from fifty to sixty persons living in Peoria; Waters' family composed at least one-eighth of the entire population.

Not only the residences, but nearly all the movements of

each family were necessarily notorious to all the others, and to those living adjacent to the little town.

That Waters was never a settler or housekeeper on this land is most abundantly established by the testimony of his neighborhood—Hale, Ewalt, Doolittle, Fulton, Ewalt, Menard, Bristol, Moffit, Johnson, Langworthy, Caldwell, and Ballance. (Record, pp. 57, 86, 85, 66, 86, 88, 89, 79, 52, 54.)

Even Waters himself does not swear to it, but only that he is so on the 24th of September, 1832, which affidavit of his, from all the evidence of both parties, has no foundation in fact. All agree that he was never there but once, and that only for a very limited period.

To entitle himself to the benefit of the act, he must have been a settler and housekeeper on the 5th of April, 1832.

2 Land Laws, p. 562, No. 506.
" " 565, " 507.
" " 568, " 509.
" " 569, " 510.
" " 570, " 511.
" " 571, " 512.
" " 641, " 599.

The reliable evidence in the case tends to prove that Waters was in the cabin, with his wife, only at the time he made his affidavit before Hunt for a pre-emption.

In addition to the defendant's evidence, before referred to, he has his own answer under oath, which is equivalent to the testimony of two witnesses, and also the letter of the Commissioner of the General Land Office, with extracts from the affidavits on file in his office, all tending to the same point, and showing, almost beyond cavil, that Waters was never a housekeeper and settler, as required by law to entitle him to a pre-emption, and that his entry was fraudulent and wholly void.

III.

Assuming that the foregoing positions are correctly taken, the complainants have no standing in a court of equity.

They claim only under the acts of April 5, 1832, and of March 2, 1833.

The act of April 5, A. D. 1832, expired, by its own limitation, on the 5th of October, 1832. Waters' right to a pre-emption, if he had any, ceased then. There was no guarantee, on the part of the United States, that the plats or surveys would be made and returned at any particular time. On the 5th of October, 1832, all the claim, or pretense of claim, which any one had by proof of pre-emption, was gone; such party, having paid no money, could not, in equity, even insist upon a revival of the law, but occupied the same position that he would have done if the act had never been passed.

The application and proof became valueless, because there was no law to give them vitality.

As an act of mere grace, Congress then passed the act of March 2, 1833, (1 Land Laws, 521,) reviving that of April 5, 1832. This was an act to *revive*, not to enlarge, the act of April 5, 1832.

The title to this act is an index to its object, "to revive the act of April 5," 1832, not to enlarge or to extend it to different classes of settlers or occupants than those designated as settlers and housekeepers; but to give to those who were settlers or occupants, and *were authorized under the provisions* of that act, to enter public lands, and who were prevented from so doing, for any of the reasons specified, the right to enter said lands *on the same conditions, in every respect, as were prescribed in said act, within one year* after the several obstacles were removed.

What class of settlers or occupants of the public lands were authorized to enter by pre-emption, under the act of April 5, 1832?

Settlers, being housekeepers, and none others.

What were the conditions upon which such settlers and housekeepers might enter such land?

That, in addition to their being such settlers and housekeepers, they complied with such regulations as might be prescribed by the Secretary of the Treasury.

Neither the letter or spirit of the law will bear any other interpretation.

In order to avail themselves of the benefits of this act, a new proceeding must be instituted. The revival of the law does not revive the numerous applications made under it. It becomes necessary not only to show that the applicant was a settler and housekeeper, on the 5th of April, 1832, but also that he had not, in some other place, availed himself of the benefit of the law of 1832, during the period of its existence.

Keeping this principle in view, the Commissioner of the General Land Office and Secretary of the Treasury, under the provisions of the revised act, made and prescribed the regulations by which parties, claiming under the same and the supplement thereto, should proceed to prove and establish their respective rights and claims.

All former proceedings were treated and considered as abrogated. The affidavit accompanying the application must show that the applicant was an actual *settler* and *housekeeper* on the land, must pray for leave to enter the same under the act of March 2d, 1833, so as to include his improvements, and also a statement that he had not entered under said act or the act of the 5th of April, 1832, (2 Land Laws, pp. 575, 6, No. 518,) at any land office of the United States, any land in quarter sections, in his own, or in any other name. Also that the land is intended for his own personal benefit, and not in trust for another, and that it is intended for cultivation, or use of improvement, etc., etc.

One of the objects of the regulation was, to prevent any one person from entering under the act aforesaid a greater quantity than two quarter sections. They are authorized by, and based upon the law, and when regularly adopted and promulgated by the proper officers, become part of it.

IV.

The Register and Receiver had no jurisdiction or authority to permit the entry to be made by Waters, it being apparent that he had in no sense complied with the rules and

regulations of the land office, so as to entitle him to make such entry.

The bill shows that no new application was made under the act of 2d of March, 1833, by Waters or his heirs, to enter the land, but that the pre-emption was adjudged to the latter upon the proof and application filed under the act of April 5th, 1832.

The entry was simply void, not voidable, and the Commissioner decided correctly when he so determined.

The right and authority of the Secretary to prescribe these rules, is not only given by this law, but it is recognized in every opinion of the various officers of the Government, under all the pre-emption laws which have ever been passed.

Under the act of 29th of May, 1830, (2 Land Laws, pp. 98, 99,) the Attorney General says: "Proof as required by the law is indispensable. He (the Commissioner) may determine by regulations what kind of proof shall be received, and in what manner it shall be made."

"When the Register and Receiver had not jurisdiction, or have proceeded irregularly, that is, contrary to the regulations, their decisions will be treated as nullities." 2 Land Laws, pp. 92, 93.

There is not a pretense on the face of this bill that in making this entry, Waters' heirs, or the Register and Receiver proceeded under the regulations prescribed. All they did do was to make a parole, unwritten application to enter the lands under the affidavit and proof filed under the former law, without the slightest regard to the rules adopted for presenting and proving pre-emptions, under the act of 2d of March, 1833, adopted May 17th, 1833. 2d Land Laws, p. 575.

When, on the 17th of May, 1833, rules and regulations were adopted, pursuant to which these pre-emptions were to be proved and the land entered, all former rules and regulations, inconsistent with them, were necessarily abrogated and annulled, and if the latter rules required anything further to be done, (not inconsistent with the law,) the doing whereof

was a necessary prerequisite to the right of the party to enter the land, and until accomplished the Register and Receiver had no jurisdiction to permit the entry, and the entire proceeding would be irregular and void. If the applicant is within the law, he is entitled to his pre-emption, but he must prove that right in the manner prescribed and regulated by the competent authorities. Waters nor his heirs never made the proper application and proof, or either of them, to entitle him or them to this land. To do this there was abundant time, the regulations were promulgated in May, 1833, Waters died in August, 1835—probably after the return of the township plats to the land office. Why was not the proper application and proof made? The reason was obvious; it could not have been done without the commission of perjury. Notwithstanding the general averment in the commencement of the bill, that Waters was a *settler* and *housekeeper* on the land, on or before the 5th day of April, 1832, yet the whole bill and the evidence set out and exhibited with it, show clearly that he was not such *settler* and *housekeeper*, and that in fact he never lived on the land more than a night or two, and that immediately preceding the 24th of September, 1832. (Exhibits A, G, I, K.) As before remarked, the act of 2d of March, 1833, does not enlarge or extend the privileges of pre-emptors in any other respect than as to the time of making the entry in particular cases, but on the contrary, it restricts and limits those rights in this, that in addition to the requisition of settlement and housekeeping, it requires that such settlement and housekeeping should have been continued to the 1st day of May, 1832. 1 Land Laws, p. 521.

The counsel for the complainants seem to think that they are saved by the 2d section of the acts of 2d July, 1836. 1 Land Laws, p. 550.

This section provides that where entries have been made *pursuant to the instructions* sent to the Register and Receiver from the Treasury Department, and the proceedings have been in all other respects fair and regular, that *such* entries

and sales shall be confirmed, and that patents shall issue thereon as in other cases. 2d Land Laws, pp. 106, 211.

It cannot cure an illegal, or fraudulent, or irregular entry, and it is but begging the question to assume that it does so.

V.

If Waters had any rights or claim under the acts of April 5th, 1832, or March 2d, 1833, he waived them by his neglect to comply with the laws and regulations of the General Land Office. It is a clear proposition, sustained fully by authorities, that even though a party may have a just claim to a pre-emption under a law, yet if he neglects to assert it in apt time and in the manner prescribed by law and the regulations of the land office, made under and pursuant to law, he cannot assert or maintain such claim in the first instance by suit at law or proceedings in chancery. When he has done all that such laws and regulations require to be done, his claim shall not be defeated because the land officers decide erroneously in rejecting the same, but until that time he has no standing in a court of justice to enforce it. Lytte vs. State of Arkansas, 9 Howard, p. 333.

VI.

The contract between Waters and Stillman was neither morally nor legally binding on Stillman or his heirs or representatives. It was "*nullum factum*" in its origin. Neither Stillman or Waters had any claim whatever to a pre-emption under the act of April 5th, 1832. Neither were settlers and housekeepers on the land, and the only condition upon which Waters was to convey to Stillman was, that he obtained a pre-emption and entered the land under that act. This, as has been already shown, he could not do. He neglected it for two and a half years after the act was revived, and then having died, his heirs entered it, in fraud of the law, and without a shadow of right.

They never conveyed, nor offered to convey to Stillman, under the contract. Under these circumstances, Stillman's heirs did as they lawfully might do. They treated the con-

tract as a nullity, and the entry of Waters as void, and on the 15th June, A. D. 1836, filed their proof of pre-emption under act of 19th June, 1836, and entered the land under the same, on the 19th July 1838. If this entry be legal, and the former one void, there is no legal, equitable, or moral obligation upon the defendant, claiming under Stillman, or his heirs, to surrender his title to this land, Stillman made no such contract. He is guiltless of a *gross fraud*, and also of even a suspicion of fraud in refusing to comply with so unreasonable a request. There is a manifest distinction between the requirements of the acts of April 5th, 1832, revived by the act of March 2, 1833, and the act of the 19th June, 1834, (1 L. L., 525,) which revives the act of May 29, 1830, (1 L. L., 473,) in regard to the character of the settlement and occupancy of the land sought to be pre-empted. The former requires that the applicant should be a *settler* and *housekeeper* on the land on the 5th of April, 1832, the latter, that he should have been a *settler or occupant* of the public land prior to the passage of said acts; and under the act of 1830, that he should have made improvements, and cultivated the same, in 1829; and under the act of 1834, that he should have made improvements or cultivated the same in 1833. The language of both acts is the same: "Every *settler or occupant* of the public lands, prior to the passage of this act, who is now in possession, and cultivated any part thereof in the year (1829, 1833,) &c."

The Attorney General, and other public officers decided correctly; that under these laws, actual personal residence upon the land was not indispensable. That one may be an occupant of the public lands, or of any tract of land, without a personal residence upon it, is too palpable to admit of the slightest doubt. This is all that has been decided. It never has been held, so far as we are advised, by any tribunal, that a person can be a *settler* and *housekeeper* upon one tract of land, while he is actually settled, living, and keeping house upon another. It would be a "*gross fraud*" on the English language to give to the terms "*settler*" and

"*housekeeper*" any such construction. See Huntsucker vs. Clark, 12 Mo. R., p. 333.

VII.

If Waters, or his heirs, had any equitable claim to this land, Underhill had no such notice of it as could affect his legal title derived by patent from the United States.

Although the bill speaks in general terms of *notice, knowledge,* &c., yet it is apparent that the complainants rely only upon the record of proceedings in the land office, the recording of the certificate of entry, the contract from Waters to Stillman and Stewart, the assignment to Wolcott, Pettingill, and Russel, the possession of Russel, and of Cross and Gale, his administrators, *as* the notice to charge the defendant with knowledge of their equity. Perhaps the filing of Waters' affidavit and proof, in 1832, under act of 5th April, 1832, was notice of his claim to all persons. But it was only notice of what, on its face, it purported to be, viz: that he was a *settler* and *housekeeper* in September, 1832, and I think I have already shown that such settlement conferred no right. But this could be no notice that he claimed any right under the supplemental act of March 2d, 1833. Such a claim as has been before shown is evidenced by a proceeding essentially different.

Besides, when, in 1841, Underhill purchased, the entry by Waters' heirs, in 1835, had been set aside, and canceled for three years, and for the same period no person had been in possession, claiming under Waters or his heirs. The patent had been issued to Stillman's heirs, and no intention had been manifested to assert an adverse claim to the land.

VIII.

The bond from Waters to Stillman can in no event cut any figure in, or have any bearings upon the questions at issue in this case.

1st. Because Waters was not a *settler* and housekeeper, nd h ad no right to the land whatever, nor any pre-emption

thereon, and consequently could not contract to convey any portion of it to Stillman.

2d. Because the contract was not binding on Waters, because he and Stillman, as recited in the bond, were joint occupants only, not settlers and housekeepers *on* the land.

3d. Stillman could not have enforced or compelled a conveyance from Waters. In order to make the entry legally, Waters was compelled to swear that he did so in his own right, and not in trust, &c. 2 Land Laws, 562, No. 506.

4th. Had they been joint settlers and housekeepers, the proof and entry must have been made (if it could have been made at all) jointly. Whether the joint settlers and housekeepers could make proof under law—*dubitatim*. 2 Land Laws, p. 567.

5th. The bond was contrary to the policy of the law, which required all persons to make such entries in their own right, and not for another, the object being to prevent parties from dividing up and partitioning among themselves the lands of the Government before sale, and thus reducing their value in the market.

7th. Neither Waters or his heirs ever conveyed, or offered to convey, to Stillman, or his heirs or assigns.

8th. It is proved by one witness directly that Waters said the bond was canceled, and strong presumptions of this fact are raised from all the evidence.

9th. The recitals in the bond show only that they (Waters and Stillman) had improved and cultivated the land jointly, not that either were settlers and housekeepers on the land.

IX.

Stillman, under the act of the 19th of June, 1834, was unquestionably entitled to pre-emption. He was in possession, and had cultivated a part of the land, in 1833. The law required no actual residence or housekeeping on the land, but settlement or occupancy merely. 1 Land Laws, 525.

Suppose even that he had taken possession under his contract with Waters, (which was not true, for the testimony of

John Caldwell, complainant's witness, shows that Stillman made the first claim, by building a rail pen, in 1831,) it would be nevertheless true that he was a settler or occupant within the meaning of the law; he was technically within its letter. The entry was made in his name, in July, 1838, although he died in March, 1837, and the grant enured at once to his heirs, under the act of Congress of May 20, 1836. 5 U. S. Stat. at Large, p. 31.

The patent issued to Stillman, December 5, 1838, Stillman conveyed to Wren, June 19, 1836, and Wren to Underhill, February 23, 1841.

Upon its face the title in Underhill is complete, both in law and equity. When he purchased, in 1841, three years had already elapsed since Waters' entry had been set aside and declared a nullity, and no motion had been made, or proceedings instituted, to assert his title.

Then eighteen years elapsed after the title to Stillman, and sixteen after Underhill's purchase, before this bill was filed. Meantime the land had increased in value one hundred-fold, had been laid out into town lots, improved and built upon by innocent purchasers, and had become a material portion of a thriving and important Western city. At this time, and not before, avaricious, sordid, and greedy speculators began to discover merits in the complainants' case, and how deeply they had been wronged and injured by the Government officers and the defendant.

The purchase by Underhill then was made in good faith, and the entire legal and equitable title is vested in him. He need not go behind his patent for a legal or equitable title; it is conclusive evidence of right and title in the patentee, until attacked and overthrown by some one who can show a superior equity.

X.

The defendant is also fully and wholly protected by the statutes of limitations of the State of Illinois, holding a connected title in law and equity, deducible of record from the

Government of the United States, and actual possession for more than seven years prior to the filing of the complainants' bill. Purple's Stat., vol. 2, p. 730, §§ 8, 11. Purple's Real Est. Stat., p. 424, §§ 1, 2.

For all which causes the complainants are without merit, have no grounds for the interference of a court of equity, and their bill must be dismissed.

J. M. CARLISLE,

W. B. WEBB,

Appellees' Counsel.